IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW YORK
- - - -

VICTOR CALLENDER, Plaintiff,

vs.

FORSTER & GARBUS, LLP and DISCOVER BANK, Defendants.

CIVIL ACTION NO. 1:15-CV-05813-AKH

DEPOSITION OF

JOEL D. LEIDERMAN, ESQ.

COMMACK, NEW YORK

SEPTEMBER 28, 2016

REPORTED BY: WANDA WILKINS, CSR NO. 30XI00117400

JOB NO. 139075

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Deposition of JOEL D. LEIDERMAN, ESQ., taken on behalf of plaintiffs, at FORSTER & GARBUS, LLP, 60 Vanderbilt Motor Parkway, Commack, New York 11725, commencing at 11:00 a.m., on Wednesday, September 28, 2016, before Wanda Wilkins, CSR No. 30XI00117400.

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ALSO PRESENT:

MARK GARBUS, ESQ., FORSTER & GARBUS

I N D E X

WITNESS
JOEL D. LEIDERMAN, ESQ.

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J O E L D. L E I D E R M A N, residing at 60 Vanderbilt Motor Parkway, Commack, New York 11725, is duly sworn by a Notary Public of the State of New Jersey and testifies under oath as follows:

MR. KESHAVARZ: Let the court reporter note that there is a witness here who's going to be testifying later today. Mr. Garbus?

MR. GARBUS: Yes, Garbus, G-A-R-B-U-S.

MR. KESHAVARZ: I object to the witness's appearance at the deposition of the corporate representative for fear that it may intentionally or unintentionally affect the testimony of Mr. Garbus and I'll ask that the witness be excluded.

Will you consent to that?

MS. LASTORINO: No, I do not consent. Mr. Garbus is permitted to be here, under Local Civil Rule 30.3 of the Southern District Court, which provides that, "A witness or a potential witness in the action may attend the deposition of a party or witness unless otherwise ordered by the Court."

MR. KESHAVARZ: Other than to affect Mr. Garbus's testimony, what reason is he here for?

MS. LASTORINO: I don't need to give you a reason other than he's permitted to be here. He's here. If you want to get the Court on the phone, get Judge Hellerstein on the phone.

MR. KESHAVARZ: To make the record clear, I'll object to Mr. Garbus's testimony and recall the right to recall him.

MS. LASTORINO: You have no basis for that. So, let's get the Court on the phone.

MR. KESHAVARZ: I also want to raise the issue, since we're going to a jury trial, the jury can weigh the credibility of Mr. Garbus's affect -- the credibility of Mr. Garbus's testimony, based on the fact that he is listening to the testimony of the corporate representative, Mr. Leiderman, over plaintiff's objection.

BY MR. KESHAVARZ:

Q. Mr. Leiderman --

MS. LASTORINO: Excuse me. Hold on one second.

MR. KESHAVARZ: Go ahead.

MS. LASTORINO: For what you said before, let's get the Court on the phone.

MR. KESHAVARZ: Why?

MS. LASTORINO: Why shouldn't we?

MR. KESHAVARZ: I preserved my objection.

MS. LASTORINO: He's not going to be produced another time. So, why don't we get Judge Hellerstein on the phone?

MR. KESHAVARZ: If I preserved the objection. It's not a bridge we have to cross now. It could be a bridge we can cross later. I just want to preserve the record.

Can we go off the record for a second?

(Whereupon there is an off-the-record discussion.)

MS. LASTORINO: Are we back on the record?

MR. KESHAVARZ: Yes, we're back on the record.

MS. LASTORINO: I just want the record to reflect that I suggested calling the Court now to resolve this and Mr. Keshavarz does not want to.

MR. KESHAVARZ: And so the record is clear, I don't believe that I'm under obligation to call the Court at this time. The issue goes to two issues. One goes to the credibility of Mr. Garbus. So the jury can infer on the fact that he's attending over plaintiff's objection.

(Whereupon there is a brief interruption.)

MR. KESHAVARZ: And two, I want to raise the prospect of it being a basis for recalling Mr. Garbus at a later time. That's not an issue that I believe you have to have the Court intervene on because it hasn't been raised yet.

MS. LASTORINO: And again, we

object to and we will not produce him
another time, so.

EXAMINATION

BY MR. KESHAVARZ:

Q. Mr. Leiderman, good morning?
A. Hi.
Q. Thanks for your time today. Have you ever been known by any other name other than Joel Leiderman?
A. No.
Q. Do you have a middle initial?
A. D as in David.
Q. What does D stand for?
A. David.
Q. In preparation for your deposition today, did you review any documents?
A. Yes.
Q. What documents did you review?
A. I reviewed some letters, a copy of a restraining notice, I reviewed some notes on the file.
Q. Anything else?
A. Today?
Q. At any point.
A. You know, basically, the

information that's been produced in discovery.
Q. Okay. Are any of the documents that were reviewed in preparation of your testimony a document that has not been produced in discovery?
A. No.
Q. Okay. And what was the reason for your reviewing those documents in preparation for your testimony today?
A. Because I was being deposed.
Q. Did you speak with anyone -- without the content, did you speak with anyone in preparation for your deposition today?
A. I spoke to Ms. Lastorino.
Q. And when was that?
A. I spoke with her this morning. I spoke with her yesterday. I might have had a conversation last week or two and I met with her a couple of weeks ago.
Q. I understand. During the meetings with Miss Lastorino --
Is it Miss or Ms.?
MS. LASTORINO: Ms. is fine.
Q. Ms. Lastorino -- was anybody else present?

A. Mr. Garbus was at the meeting at her office.
Q. At any other times you spoke with Ms. Lastorino, was there anyone else, other than Mr. Garbus?
A. This morning, Mr. Forster stopped in to say hello.
Q. Anyone else?
A. No.
Q. Okay. On the phone calls that you were on with Ms. Lastorino, was anyone else on the phone?
A. No.
Q. Okay. Other than reviewing the documents you indicated, did you take any other steps in preparation for your testimony today?
A. I asked some people in the office certain things that I might have not been completely familiar with. So, I asked some people in the office.
Q. Who?
A. Karen Pizzimenti.
Q. Can you spell it?
A. P-I-Z-Z-I-M-E-N-T-I, I believe.
Q. Who else?

A. Scott Miller.
Q. Scott Miller?
A. Scott Miller. Scott Miller.
Q. Yes, Miller. Anyone else?
A. Joe Durante.
Q. Anyone else?
A. Pat McDowell.
Q. Anyone else?
A. Candace Newman. That's probably it.
Q. All right. And when did you speak with these individuals?
A. Within the last week.
Q. Okay. Did you speak with them separately?
A. Yes.
Q. Okay. How long did your meeting with Lauren Pizzimenti last?
A. Karen.
Q. Karen Pizzimenti. How long did that meeting last?
A. Five minutes on two different occasions.
Q. And what is her role?
A. She works in the compliance

department.

Q. And what is the compliance department?

A. The compliance department is the department of the firm that handles complaints and other issues if a person seeks validation the debt or disputes the debt, it will go to people in the compliance department. They also interact with clients, in terms of issues involving consumers.

Q. Is she the head of the compliance department?

A. No, she's not.

Q. And what did you speak with her about?

A. I asked her -- there were certain initials -- as we go through the notes, which I assume we will be doing today -- there were certain initials of people who handled the account of Victor -- what is it? Victor Callender? Vincent Callender?

MS. LASTORINO: Victor.

A. Victor Callender and I wasn't quite sure of the names. Many of whom are not here any longer, no longer employed by Forster and Garbus and so, I wanted to make sure that I understood who those people were.

Q. Did you speak with Miss Pizzimenti about anything else?

A. No.

Q. Who are those people, if you recall, that Miss Pizzimenti said were in the collection notes but you didn't recall the name of?

A. Janelle Lewis, Shaheed Williams. Let me think. I wanted to confirm who T.R. as that's Theresa Rock but I knew that. I just wanted confirmation of that. John Lane, Brianna Erb, E-R-B. I forget -- her name is Sue -- something like Sueheidi Mejia (ph).

Q. Anyone else?

A. Not that I can remember. As we go through the notes, I'll be glad to testify.

Q. So, the individuals you just listed, those are all people who are involved with the collection of the putative debt against Mr. Callender?

A. They were involved with the account of Victor Callender.

Q. And were they involved in the

attempts to collect the account against Mr. Callender?

A. Yes, I guess so.

Q. And the account you mean by collecting on the vacated Judgment?

A. Well, yes.

Q. By "the account," do you mean Forster & Garbus's attempts to collect on the vacated Judgment?

MS. LASTORINO: Objection to form.

Q. You may answer.

A. Yes. However, we will get into the issue of the vacated Judgment, I'm sure, in later testimony.

Q. But I'm just trying to get --

A. Yes, is the answer.

Q. And it's normal to anticipate an answer but for the court reporter, who is scowling at me now, I need to make a clear record. So please pause for a second. Let me finish the question.

So, the question is when Forster & Garbus says it is collecting the account, when you say the words "account," you mean the vacated Judgment as to Mr. Callender? Is that

what you mean by "account"?
MS. LASTORINO: Again, objection to form.
A. Yes.
Q. Thank you. And when was your meeting with Karen Pizzimenti?
A. I don't know the date. Within the last two weeks, on two occasions.
Q. When did you meet with Mr. Miller, Scott Miller?
A. It was over the telephone.
Q. And how long did that call last, approximately?
A. Thirty seconds.
Q. And what was said?
A. I don't even remember the question I asked. It just had to do with something in the notes that I wanted clarification on and there were a few conversations, one or two. Maybe more than one.
Q. And what is Mr. Miller's involvement?
A. He's the director of collections.
Q. What does that mean?
A. He's in charge of the collection

departments. So, the supervisors report to him, supervisors of the various client units. He has liaison with the clients, as well, client meetings, which are primarily over the telephone.

Q. Who is Joe Durante?

A. He works in the IT department.

Q. And when did you speak with him?

A. Yesterday.

Q. And how long was that conversation?

A. Thirty seconds.

Q. And what was that?

A. We were trying to get some letters that were produced yesterday by Ms. Lastorino.

Q. Do you know, were those letters digitally scanned and Forster & Garbus --

A. No, they were not scanned.

Q. You have to wait until I finish the question because she's scowling at me again.

So, you spoke with Mr. Durante yesterday to get additional documents, collection letters, sent to Mr. Callender that your attorney produced yesterday. Is that correct?

A. Yes.
Q. And are you saying that those letters were not digitally scanned copies?
A. That is correct.
Q. Were they recreated documents?
A. Yes.
Q. And how did you know to recreate the documents in that manner?
A. When I was reviewing the notes and I was not familiar -- and that may be one of the reasons I called one of the persons on this list. I don't remember who -- that these letters were not scanned but they could be digitally -- they could be reproduced based on the electronic record; and so, in learning that, then these letters that I would have testified to and would testify to, as we go through the notes, we now can actually and have provided the copies to you, yesterday and this morning.
Q. Okay. How do you know that the content of those letters that were produced yesterday are the correct content of the letters that were alleged to be sent by Forster & Garbus to Mr. Callender?
A. I rely upon the integrity of our

computer system and the business practices.
Q. So, these are form letters that are -- these are form letters that Forster & Garbus has that are merged with the data files that Forster & Garbus has. Is that correct?
A. Yes, that's primarily how it's done.
Q. So, each of the letters that were produced yesterday, you have a template for each of those letters?
A. There's a template for the letters.
Q. And those are the letters -- those are among the letters that Forster & Garbus regularly use to collect debts. Is that correct?
A. Yes, um-hum.
MR. KESHAVARZ: Thank you. Let's go off the record.
(Whereupon there is an off-the-record discussion.)
MR. KESHAVARZ: Can you read the last question and answer, please?
(Whereupon the last question and answer are read back by the reporter.)

BY MR. KESHAVARZ:
Q. Let me pause for a second by going over some of the ground rules about a deposition. Have you ever had your deposition taken before, sir?
A. Yes.
Q. Approximately how many times?
A. About five, six, something like that.
Q. So, then you pretty much know how it works, but if I ask you a question and you don't understand, will you please ask me to rephrase it?
A. I will.
Q. And if I ask you a question and you do not ask me to rephrase it and you answer it, is it reasonable for me to assume that you understood the question.
A. I guess so.
Q. Okay. So, Pat McDallia (ph) --
A. Dowell.
Q. Dowell, McDowell. How long did you speak with Pat McDowell?
A. Two minutes.
Q. And these were all conversations

in preparation for your testimony?
A. Correct.
Q. And what was said?
A. To get the copies of these letters. She was assisting in that.
Q. And by "those letters," you mean the letters that were produced yesterday?
A. Correct, um-hum.
Q. And what is her role?
A. She's director of operations.
Q. And what is the role of the director of operations?
A. She's in charge of general operations of the firm, including client relations regarding affidavits of service and new referrals and referral issues and client directives.
Q. What do you mean by "affidavits of service issues"?
A. Affidavits of facts. I'm sorry. Affidavits in support of the entry of judgment. Did I say "affidavit of service"? Sorry. Affidavits of facts securing information from the client, allowing us to proceed with the lawsuit and judgment.

Q. Thank you. Now, there was -- the last person was Candace?
A. Candace Newman.
Q. And how long did you speak with Miss Newman for?
A. Also, a few minutes, yesterday.
Q. And what was the --
A. Same thing, trying to get the letters.
Q. For the court reporter, what was the discussion yesterday with Miss Newman?
A. With Miss Newman, again, assisting -- I was trying to get them so I asked various people because I didn't know who was going to be available to do it, so.
Q. And what's her title?
A. I don't know her title. She's in the auditing department. I don't know if she has a title, per se. She's director of auditing, if you want.
Q. Okay.
A. Assistant.
Q. So, what do you do, Mr. Leiderman?
A. Chief cook and bottle washer. I get involved in compliance issues. I act as

liaison with outside counsel, generally, on FDCPA matters. I handle special projects for the firm. I get involved with reviewing letters and on the collection floor. Most of the collectors or supervisors will come to me if they have any questions or need direction on things. If I need to review letters that need to be sent, liaise with -- I handle problem calls. You know, telephone calls if there are people who need to speak to an attorney, generally. I'm in the office every day. I don't go to court. So, I'm available in the firm to handle those kinds of issues.

Q. Are you one of the partners at the firm?

A. I'm not a partner, no.

Q. Who are the partners at the firm?

A. Ronald Forster and Mark Garbus.

Q. Who sets the policies and procedures for compliance with the FDCPA at Forster & Garbus, if you know?

A. It would be the partners and, I guess, myself, primarily.

Q. Anyone else?

A. In terms of setting the policies

and the procedures, other people might write the procedures but ultimately, it would be approved by the partners.

Q. But the partners are the ones who make the decision about what policies and procedures are in place?

A. I guess, yes, um-hum.

Q. Are the partners the ones who are in charge of making sure that there's compliance with Forster & Garbus's policies for compliance with the FDCPA?

A. Yes, and other persons, such as myself and the compliance officer, Ann Visecchia, to implement the policies.

Q. What is Ann Visecchia's title then, please?

A. She's the manager or director -- I'm not sure of that title -- of the compliance department.

Q. By the way, I never got this on the record. You're the court representative for Forster & Garbus today?

A. Yes.

Q. Okay. So, let me just ask you --

(Whereupon there is an

interruption.)
Q. So, Forster and Garbus garnished Mr. Callender's wages based on a vacated Judgment. Is that correct?
MS. LASTORINO: Objection to form.
A. Yes. When the case came in to us in 2009 -- it was referred to us in 2009 -- it was a valid Judgment. That Judgment was valid up until the time that Mr. Callender brought an Order to Show Cause and successfully brought the Judgment vacated. However, Forster & Garbus was not aware of that until the time that Mr. Callender's wages were garnished to the extent of approximately $210.00 and we received a letter from -- I believe it was the Urban Justice Center, who advised us, at that time, that the Judgment, unbeknownst to us, had been vacated; and at that time, within a few days thereafter, moneys that had been detected, including marshal's poundage were refunded to Mr. Callender.
Q. Do you know if there were any fees that were associated with the garnishment of Mr. Callender's wages, based on a vacated Judgment, that were not returned to Mr. Callender?

A. No, I do not.
Q. Why -- I'm sorry. Is that the reason why Forster & Garbus garnished my client's wages, based on a vacated Judgment? Were you satisfied that that's the reason?
MS. LASTORINO: Objection to form.
A. As far as Forster & Garbus knew, it was a valid Judgment, and that's why we garnished his salary.
Q. Okay. What meaningful attorney review, if any, did Forster & Garbus undertake prior to garnishing my client's wages?
A. Mr. Callender was notified on many occasions of the involvement of our firm and that a Judgment had been entered. Mr. Callender did not do anything to advise this firm that the Judgment had been vacated. In fact, he had made a complaint to the Department of Consumer Affairs. In that complaint, he alleged that he had never had a Discover account, Discover card account. Nevertheless, prior to that time, he had already, with a Discover card account -- this particular account -- had gone to court and had the Judgment vacated; but yet, in his complaint to the Department of Consumer Affairs,

he never once mentioned the Judgment. He never once said anything about a judgment. He denied that he had a Discover card. That account was considered, therefore -- his complaint was considered to be a fraud or false identity claim, so that we ceased collection on it at that time. We went back to the client. The client investigated that. They were able to manage the application and the signatures and the addresses and the billing statements, et cetera, and determined that it was an invalid fraud. So, there was no knowledge at Forster & Garbus that the Judgment had been vacated. The notice to the -- the Order to Show Cause was not served on Forster & Garbus, despite the fact that Mr. Callender was aware, based on many letters sent to him over the course of time, between 2009 and the date the Judgment was vacated. Never once notified us that he did not owe the debt until he, you know, alleged same to the Department of Consumer Affairs and never did anything to serve us with the Order to Show Cause, despite knowledge of the fact that our client was trying to collect that Judgment.

Q. Anything else?

A. No. At this point, that's my answer.

Q. All right. But I just want to make sure that the record is clear. Prior to issuing -- prior to Forster & Garbus garnishing my client's wages, based on a vacated Judgment, what -- up top point, what meaningful attorney review did Forster & Garbus take to determine whether the Judgment it was executing on was valid, when it issued the execution?

MS. LASTORINO: Objection to form.

You can answer.

A. When the Judgment was entered -- when the account was referred to us with the Judgment, we sent a letter, pursuant to the Fair Debt Collections Practices Act, identifying the fact that there was a -- that there was a Judgment and advising that this firm was now seeking to collect that Judgment; and under the FDCPA, the debt is assumed to be valid and the Judgment is assumed to be valid unless the consumer disputes it, which he did not do at that time. Therefore, we proceed with the assumption that the debt is valid. We follow up with several letters in an attempt to contact the consumer to try to collect on it.

The question of meaningful involvement is an interesting issue on post-judgment cases. You seem to allege that the attorney has to be meaningfully involved in every, every aspect of that case. However, if you look at the history of meaningful involvement under the FDCPA, I believe it has to do more with the impression of a least sophisticated consumer. Least sophisticated consumer, okay -- if something comes out on attorney letterhead, there have been courts that have said that that raises the price of poker; and so, in New York, we have the Greco vs. Trauner case, which allows a disclaimer to be placed in that. But that's on pre-legal cases, pre-litigation cases. This is a judgment file. So, clearly, I think even the least sophisticated consumer would recognize that a letter from a law firm that says a Judgment has been entered -- well, the price of poker has already gone up. It went up when he was sued in 2005. Okay. He was aware of that Judgment on several occasions. So, in terms of attorney meaningful involvement, there's no obligation that we go forward, other than to seek to collect what we consider to be a valid debt for various reasons. We rely on the client that the Judgment was entered. It was, in fact, a valid Judgment at that time the case was referred to us, in 2009. It was a valid Judgment in 2005, when it was entered. It was a valid Judgment, up until the court determined that it was not a valid Judgment, based on an Order to Show Cause which was not served upon Forster & Garbus and that Forster & Garbus had no awareness of.

So, in terms of our involvement, had Mr. Callender sought to contact our office in such a way as to bring to our attention that for some reason, this Judgment was not valid, that would have been explored, but I don't see that in anything that I reviewed. I don't see it in the -- I don't see it in the service of the Order to Show Cause, which was not served upon Forster & Garbus, despite the fact that Forster & Garbus had sent many and had many communications to Mr. Callender when Mr. Callender made his DCA complaint. He did not say, "Oh, this Judgment is invalid. I have a Judgment against me. Forster & Garbus is seeking to, you know, collect a judgment, which is enforceable." That was not his complaint to the DCA. His complaint to the DCA is "I didn't have a Discover card."

Q. So, let me make sure if I understand your -- you raise a lot of issues. So, let's go through them.

A. Surely.

Q. And I thank you for that. I appreciate it. One thing I'm trying to get specifically, is it Forster & Garbus's position that when it executes on someone's wages, based on an alleged Judgment, is it Forster & Garbus's position that it is not required to do a meaningful attorney review of the facts and circumstances of the consumer's account, the alleged Judgment, prior to executing on those wages?

A. No. There was a review done. There's a review done by an attorney before the execution is issued and an attorney reviews the restraining notice; but it's based on information that is retained in the file at that time, such as, you know, a Judgment, Judgment information. The restraining notice or income execution could not be issued if there was a vacated Judgment because that Judgment and information would be reviewed -- would be removed from the computer file. So, it would be impossible to produce a Judgment -- a restraining notice or an income execution or a post-judgment enforcement device. So, the review is done based on the records that are there.

As to whether or not there was a bankruptcy, some of our clients do require certain, what we call, "scrubs." Bankruptcy, military, deceased and they require that at various times; and over the years, that's changed. So, in 2009, I can't tell you exactly which clients and what that -- you know, who required certain scrubs, but a lot of clients today require scrubs. Not only upon the initial referal, which is maybe what the procedure was back in 2009, but now, they're required before you enter the Judgment and before you seek to execute on the Judgment. So, before doing so, we will run another bankruptcy scrub to make sure that the person didn't file bankruptcy in the interim. We will do a military scrub to make sure the person is not in active military service and we may do, in some cases, a decedent scrub to make sure the person didn't die in the interim.

Q. Did you do anything else?

A. Well, you know, we may review the notes on the case, if there's a -- you know, but --

Q. Anything else?

A. Well, you know, again, it would have to be -- for an income execution, it would have to be a place of employment that was -- where we believed the person works or for a bank, a bank account.

Q. Anything else? Anyone else?

A. No, not that I can think of right now.

MR. KESHAVARZ: Can you read my last question back to me, please? Or two questions back, I guess.

(Whereupon the referenced questions are read back by the reporter.)

Q. Let me ask a narrower question, more of a yes or no question.

Is it for Forster & Garbus's

position that it is -- well, strike that.
Let me just mark this.
(Whereupon P-1, Income Execution, is marked for identification.)
Q. So, before I go on to Exhibit 1, is it Forster & Garbus's position that it is required to do a meaningful attorney review prior to the issuance of an income execution on a putative judgment and everything that you just talked about is the meaningful attorney review? Is that what you mean?
A. More or less, yes.
Q. Is there anything about a meaningful attorney review that Forster & Garbus believes it should conduct that you haven't discussed?
A. No.
Q. Is there -- I said "believes." So, is there anything that Forster & Garbus actually does to do a meaningful attorney review other than what we've discussed?
A. I think I've answered it.
Q. That's it. Right?
A. Yes.
Q. Why does -- does Forster & Garbus

have a different policy for a meaningful attorney review to execute on judgments where Forster & Garbus has obtained a judgment, as opposed to it being an account where a prior law firm had entered the Judgment?

MS. LASTORINO: Objection to form.

A. Okay. Over the years, we've developed where judgments that are referred that were entered by somebody else, we now make sure that we have a copy of the actual Judgment, as opposed to just relying upon client information and we also check with the courts at the time of referal to make sure that that was -- that the Judgment, you know, is valid and hasn't been, for example, vacated. We do that at the time of referal. We don't do that subsequently, other than the meaningful review of the file that I described before. So, there's no difference, other than the referal period. Once the Judgment has been referred to us and we verify that, we do the same steps, whether it was a Judgment entered by Forster & Garbus or a Judgment entered by another firm that Forster & Garbus took over.

Q. And when Forster & Garbus obtained

the judgment account from Discover as to Mr. Callender, are you saying that the Judgment had not, at that point, been vacated?

A. That is correct, in 2009. I believe the account was referred in December of 2009. That was a valid Judgment. That is correct, and we also, approximately a month later, sent to Mr. Callender a letter advising of our involvement in the account; that we were -- that a Judgment had been entered. That letter was sent and was not responded to by Mr. Callender. Therefore, under the FDCPA, we believe that is states that we may assume that the debt is valid.

Q. You said -- correct me if I'm wrong. You said that there is a change in the policy in terms of judgment accounts Forster & Garbus gets for execution, where Forster & Garbus was not the attorney getting the Judgment. Are you saying that there was a change at Forster & Garbus's policy as to how to treat those accounts? Is that right?

A. We do more -- yes, in a sense, yes, um-hum.

Q. When did that change happen?

A. It started in around November 2014, when we started to make some of these changes.

Q. What was the impetus for making these changes?

A. Just probably better practice that perhaps there were some cases that came out that we reviewed. I don't really remember the impetus of it but, you know, we started to do that.

Q. Is one of the reasons that Forster & Garbus changed it's policy because it was sued for violating the FDCPA for executing on vacated judgments?

MS. LASTORINO: Objection to form.

A. I'm not sure. As far as I know, there was one other case, which you're familiar with, that involved that issue. I don't remember the date of that case. If that was around the time you're alleging, then, yes, that might have been the impetus; but other than that case, I don't know of any other cases where there's been an FDCPA alleged violation or even any knowledge of a Judgment having been vacated without our knowledge and then we proceeded to try to collect on it. So, I understand that you may be trying to make this an issue of, "Oh, you know, there are so many vacated judgments that we're seeking to execute on," but, you know, that's not it. So, you know, we always try to better our practice.

I was present in a commercial lawyers conference for five years. We always try to do the best we can and always try to advise our members to keep up with the law and to do things, you know, to -- because there are changes in the law all the time, in the FDCPA. There are decision that come up all the time, and you think you're doing something right and all of a sudden, a decision comes out and now, all of a sudden, the practice that everybody's been doing for years and years and years, the Court says, "Oh, you can't do that anymore." So, we try to adapt our practice to that and then we get sued because now, this new practice is challenged by someone else who's saying, "That's not it." So, we try to keep up.

So, if it was the Francis case, which is the case that I think you're alluding to, if that was around November of 2014, then yes, that would have been the impetus for implementing that procedure.

Q. Just so the record is clear, the Francis case was a lawsuit brought by my office against Forster & Garbus and others for Forster & Garbus executing on a vacated Judgment.

A. That is correct, um-hum.

Q. Thank you. Other than this case, Mr. Callender's and Mr. Francis's case, has Forster & Garbus ever been sued for collecting on a vacated Judgment?

MS. LASTORINO: Objection but you can answer.

A. Not that I'm aware of.

Q. But you're the person in charge with FDCPA clients --

A. Yes.

Q. Just so the court record is clear, you're the person in charge of FDCPA compliance at Forster & Garbus. Is that correct?

A. Yes.

Q. You are the main person at Forster & Garbus who gets involved in FDCPA suits when Forster & Garbus is sued. Correct?

A. Yes.

Q. So, if there was another lawsuit against Forster & Garbus for violating -- for executing on a vacated Judgment, you would know that?
A. I believe so.
Q. And so the record is clear, there are no other instances where Forster & Garbus was sued for collecting on a vacated Judgment other than Mr. Francis and Mr. Callender?
A. As far as I remember, no.
Q. I'm just looking at a copy of Francis's complaint. We can print it out if you want, but the signature is dated, by my office, June 26, 2015. So, this new policy, it did not -- you did not take this new policy of checking as to the validity of judgment at the time date of assignment, you didn't have that changed before November 26, 2015?
A. I said '14. We changed it in '14. We started changing in '14.
Q. But the Francis lawsuit was filed in June 2015.
A. But the referral might have been before that.
Q. What do you mean that the

referral --
A. The referral of the account. I don't know the fact -- I don't remember the fact pattern of it, okay, but it had a different fact pattern than in the Callender case, if I recall. It had something to do with a judgment that had been recalled and then reassigned. So, there may have been some different factors in there.
Q. All right. Let me show you what's been previously marked as Plaintiff's Exhibit 1. Tell me if you recognize that document?
A. That's an income execution that was issued by Forster & Garbus in the matter of Discover Bank --
MS. LASTORINO: Do you have another copy?
A. -- Discover Bank versus Victor Callender that was issued by Forster & Garbus.
Q. When is that income execution dated?
A. 12/3 of '14.
Q. Do you have any reason to believe that it wasn't signed on that date?
A. No.
Q. So, we've gone back and forth

about when this change in policy was. Was Forster & Garbus's change in policy that we discussed before or after the signing of the income execution that's Exhibit 1?
A. Well, I said there were policy change. I didn't say exactly all of the policy changes, but we started to verify judgments upon referal of accounts, as I said, on or about November of '14, I believe is when we started to implement that, trying to get copies of the Judgment. So that policy would have been a few weeks before the date of this, if it was implemented in November of '14. Of course, this account was referred in December of 2009. So that policy would not have applied to this account.
Q. So, the policy was only applied to accounts that were -- judgment accounts that were forwarded to Forster & Garbus after November of 2014. Correct?
A. Yes.
Q. So, if there was a judgment account that was forwarded to Forster & Garbus before November of 2014, even if you're executing on that Judgment even today, are you

saying you would not check -- well, strike that. Let me just make sure I understand what the policy change was.

You're saying beginning November 2014, Forster & Garbus's policy was to get a copy of the putative judgment from the judgment creditor on the date of the assignment of the Judgment of account to Forster & Garbus?

A. Correct. And would not work the account until we got a copy and a judgment account might be referred to us but if the client didn't provide the Judgment for three months, no communication was made with the consumer, you know, until that time, until we got a copy of the Judgment.

Q. And how would you obtain a copy of the Judgment?

A. We would either ask the client for it or in some cases, we would go to the Court and try to obtain a copy ourselves or perhaps if there was another attorney, you know, prior to us, you know, maybe get it from his office, but we would try to secure a copy of the Judgment and confirm.

Q. Okay. The other change in policy,

other than getting a copy of the Judgment, what was the other change in the policy?

A. Well, we started to -- and this is more recently and probably prompted by your lawsuit, okay, was to now not only get a copy of the Judgment but to also verify at the time of referal that that Judgment was still valid; and we do that by contacting -- by checking eCourts and by contacting the courts directly. We don't just do eCourts. We also go on the courts' websites or call the court clerks.

Q. But when you said you would check eCourts or the court file, you said that was a policy that was after November of 2014? Is that right?

A. Yes, um-hum.

Q. When did Forster & Garbus begin checking eCourts at the time of the referal of an alleged judgment account to determine whether there's been an Order to Show Cause to vacate that Judgment?

A. I'm not sure of the exact date. It would be probably the latter part of 2015, or the beginning of 2016.

Q. So, this change in policy would

only be at the time of referal? It wouldn't apply to judgment accounts that were transferred prior -- that were previously transferred for collection?

A. Right, that is correct.

Q. Why not?

A. Because I don't think there's a duty for us to do so. If you look at, I believe, two instances of cases where this came about and yet, you know, the number of judgments could be in the thousands of these types of cases, several thousand a year. Okay. I don't think it's a required business practice or required of the firm to go and check on every single case before we do the income execution of thousands of judgments where one or two might result in this situation.

Secondly, okay, we have also taken the practice of now filing substitutions of attorneys or notices of appearance so that, you know -- and the -- we also, you know, again, when we get a judgment, the income execution or bank restraints is not the first notice that this person is getting. So, there's requested communication from the consumer with us. Again,

when we send out the first letter, the first letter says, "If you dispute the validity of this debt, you know, you can do so and we'll provide you with a copy of the Judgment, if you, you know, want." If the consumer responds, then, of course, we will do so. If he doesn't respond, again, we assume the Judgment is valid.
Q. Let's follow up on that last point. So, are you saying it's Forster & Garbus's position that if it sends a consumer a notice that they have 30 days to dispute the validity of the debt. That's called, generally, a G Notice. Is that right?
A. Generally, right, 1692.
Q. So, let's just call that the --
A. Validation notice.
Q. The 30-day validation notice. Is it Forster & Garbus's position that if it sends out a 30-day validation notice, regarding the collection of a Judgment where that Judgment was transferred from another law firm, is it Forster & Garbus's position that it is not required to take any steps to determine the validity of the Judgment?
MS. LASTORINO: Objection to form.

A. Well, again, I already testified to that: That, one, we have a right to rely on our client's information that there's a valid Judgment; and, two, as I stated, we do obtain copies of the Judgment; and, three, as we can assume, after a 30-day period, that the Judgment is valid and so without anything more, I think it's proper for us to assume that the Judgment is valid, unless brought to our attention in some way that the Judgment is not valid. Now, there are situations where people will contact us and say, "I didn't know about the Judgment and I wasn't served properly." That's a different issue. That's a separate issue, you know, and we'll respond to that accordingly. That would be a dispute and handled in a way that is -- you know, we'll follow the dispute rules.
Q. And the dispute rules are?
A. Well, we would send it to the compliance department. We would research the case, check the -- you know, check the affidavit of service, ask for information about the service, you know: Was the person living at that address at that time; and then, we will

determine the course of action. Maybe try to settle the case. Some people are willing to settle but they're not aware of the Judgment. Doesn't mean they don't own the debt. So that we may resolve the issue with the debtor at that point.

Q. Tell me if this is a true statement or not. It would take about 30 seconds or less to check eCourts to determine if Mr. Callender's -- Mr. Callender had vacated his Judgment?

MS. LASTORINO: Objection.

A. I don't know. Maybe a little longer.

Q. A minute?

A. Maybe, two minutes.

Q. Two minutes. And eCourts is the courts' web system that, for the counties in New York and many of the populated counties in New York State, they list what actions are taken in a collection lawsuit. Correct?

MS. LASTORINO: Objection.

A. In all lawsuits.

Q. In all lawsuits. It will tell you the date that a lawsuit has been filed.

Correct?
A. I believe so.
Q. It will tell you the disposition date. Correct?
A. Yes.
Q. It will tell you if there's been an Order to Show Cause to Vacate the Judgment that's been filed. Correct?
A. I'm not sure if it's on all cases. Disposition date, in some cases, if you go on to a basic screen and you look at the disposition date, it doesn't tell you what happened; but there is -- and I don't know if it's in all, you know, CALA courts, but they report, you know, the motion practice. It may very well be, but again, as I've said before, if there are 3500 judgments -- well, actually, there are more. Because if you're imposing this on not just judgments such as in Mr. Callender's case, referred by other clients, but to say that we would have to judge -- do it on every case in our office. I think it's unreasonable. I don't think it's a reasonable and required practice.
Q. When you said "3500," what did you mean?

A. Well, I'm saying if there were 3500 judgments referred in a year to us, that kind of classification.
Q. Is that accurate?
A. For -- yeah, that may be for at least, you know, recent years.
Q. Okay. And so you're --
A. And that's a small portion. I'll just go on to say that's a small portion of, you know, tele-referrals.
Q. So, for this 3500 a year, that would be a new judgment account?
A. Judgments that were referred by -- this have been obtained by other parties.
Q. I just want to make sure I'm clear. Those would be new judgment accounts -- strike that.
I'm just trying to understand your testimony. Are you saying that there would be, roughly speaking, about 3500 new judgment accounts sent to Forster & Garbus each year where Forster & Garbus was not the firm that obtained the Judgment? Correct?
A. Yes.
Q. Okay. So, right now, there would

be tens of thousands of judgment account files that Forster & Garbus is collecting on, where Forster & Garbus did not obtain the Judgment? Is that accurate?

MS. LASTORINO: Objection.

A. I would say no, because many of those judgments would have been closed out and everything like that. So, we're not talking about that kind of volume.

Q. Just roughly, about how many judgment accounts does Forster & Garbus collect on in a year where Forster & Garbus is not the firm that obtained the Judgment?

MS. LASTORINO: Objection.

A. I really don't know the number on that, you know. There would have to be several thousands of them -- I'll admit to that -- that are still with the firm. It's doesn't mean we're collecting -- when you say, "collecting on it," it doesn't mean we're collecting money on them. They're active in our office -- still active in our office. Doesn't mean that we're collecting any money or, you know, doing anything with them. They're just there.

Q. But generally speaking, your job

at Forster & Garbus in collecting judgments is to, you know, collect them, to execute on them --
A. Yes, but only a very small portion of judgments are ever collected.
Q. By "collected," you mean, actually, money received?
A. Correct.
Q. But there's a larger number where you're try to -- I mean -- strike that.
For all the judgment accounts, you're trying to obtain money to collect on the judgments. Right?
A. Yes.
Q. And for all those accounts, when you say you're trying to collect on it, one common way is to issue bank restraints or income executions. Right?
A. That is a way to do it, but it's not done willy-nilly, you know.
Q. But if Forster & Garbus has a basis to think that they know whether the consumer has a job, or banks, it's Forster & Garbus's normal course, in collecting judgments, to issue an income execution or bank restraint.

Right?

A. Yes.

Q. Okay. And you're saying because of the several thousand judgment accounts that Forster & Garbus is collecting on, where Forster & Garbus did not obtain the Judgment, because there's so many judgments, are you saying that's why it's not reasonable for Forster & Garbus to have to check eCourts each time it is forwarded an account?

MS. LASTORINO: Objection. Judge Hellerstein ruled --

MR. KESHAVARZ: Wait, wait, wait, no. He opened the door.

You can answer the question.

MS. LASTORINO: Judge Hellerstein ruled that you're limited to due diligence in this action.

MR. KESHAVARZ: He answered the question before. I'm just trying to make sure I understand it. He answered the question. So, I'm just trying to nail it down.

MS. LASTORINO: Your scope of questioning is not permitted by the

Judge's order.

MR. KESHAVARZ: I'm just trying to nail down what your testimony is. We can reread the transcript, if you want. We can go through all of that.

MS. LASTORINO: And I'm telling that you're asking for things --

MR. KESHAVARZ: Reread the transcript.

MS. LASTORINO: -- that are disproportionate pursuant to the Judge's order dated September 22, 2016, which says, "Plaintiff should focus on what the defendant did by way of due diligence in this case, in the Callender matter." So, you can go to another question.

MS. LASTORINO: Can you read back the last three questions and the last three answers? We can be here all day, if you'd like. Go ahead.

(Whereupon the referenced questions and answers are read back by the reporter.)

MS. LASTORINO: I have to make a call to the office. I'll be a second.

MR. KESHAVARZ: Actually, I'd like to stay on the record, then. I don't want the witness to leave.

(Whereupon there's a brief recess.)

BY MR. KESHAVARZ:

Q. We talked a minute ago about relying on what your client tells you as a basis of a meaningful attorney review to collect on a Judgment. Do you remember that?

A. Yes.

Q. Now, most of the collection agreements by which Forster & Garbus collects, the typical agreement disclaims any warranties about the accuracy of the information. Correct?

MS. LASTORINO: Objection. I'm sorry. Can you just read that back?

(Whereupon the last question is read back by the reporter.)

MS. LASTORINO: I don't understand your question.

Do you understand his question.

MR. KESHAVARZ: Well, don't -- if you have a question about -- and I know you're not intending to do this. I'm just saying if you have a question about the clarity of a question, then the proper response is an objection to the form of the question.

MS. LASTORINO: Well, I did object to it. So, I'm just asking him if he's okay with the question.

MR. KESHAVARZ: Well, that's where I think -- and I know you're not intending to do this, but I think the effect of that, even unintentional, would be to affect the testimony of anyone in that position.

MS. LASTORINO: It's not, Ahmad, please.

Q. But do you understand my question, sir?

A. I understand it.

Q. And what's your answer?

A. My answer is I'm not familiar with the contract provisions of all the clients. I'm not familiar with that being a clause that I focused in on and I think that in terms of whether there's a clause or not, there's quite often that there is terminology such as that, and I'm not saying there is in the contracts. I'm not saying -- your representation that "most of the contracts," I wouldn't concede to that. I have no idea whether most of them or any of them have that clause in it. Nevertheless, if it did have that clause, it doesn't mean that the information is not reliable; and when you have clients who provide us with reliable information -- and Discover is one of the best clients in that regard -- that there would be any reason not to believe the accuracy of the information. So, whether there's a clause like that makes no difference as to whether or not the information is accurate.

Q. So, whether the debt collector says -- well, if that's the answer to your question, that's the answer to your question.

For collection on Discover accounts, do you know, one way or the other, whether Discover disclaims warranties about the accuracy of the information?

A. I have no idea.

Q. But even if Forster -- strike that.

Are you saying that even if

Discover disclaimed the accuracy of the information and said that it's the duty of the attorney to independently make a determination as to the validity of a Judgment to collect, are you saying that even if there was such a clause, you're entitled to rely on the client to determine whether the Judgment is valid --

MS. LASTORINO: Objection to form.

Q. -- at the time of execution?

MS. LASTORINO: Objection to form.

A. What difference does it make -- why did you say, "at the time of execution"? Execution can come many years after the referral.

Q. All right. So, let me rephrase that. Is it your position that if Discover -- really any judgment creditor -- sends you a Judgment to be collected on, if their agreement explicitly disclaims the accuracy of the information, and says "that's the duty of the law firm to independently determine the validity of the accounts," are you saying that it would not be Forster & Garbus's duty to independently select the validity of the accounts?

MS. LASTORINO: Objection to form.

A. I think there's very many factors that go into that. I think we can rely on the information of the client, despite any representation that you're stating, as well as the fact that we communicate with the consumer and ask him to, you know, dispute the debt or to seek confirmation of the debt; and if he doesn't do so, that becomes an assumption and it's an assumption that the debt is valid and that the Judgment is valid.
Q. And because of that assumption --
A. And as I said, also, we do obtain copies of the judgments and so --
Q. Well, if the Judgment has been vacated, there would, obviously, by definition, always be a Judgment. Right?
MS. LASTORINO: Objection.
A. Again, that's a different scenario. That's not talking about the Judgment at the time of referal. So, subsequently, to me this is a Wernoff (ph), this case, Callender.
Q. Wernoff, Callender and Mr. Francis is another instance of that happening?
A. Right.
Q. And Miss Brown is another instance

where Forster & Garbus was sued for collecting on a vacated Judgment. Right?
A. I don't remember that one.
Q. Didn't it settle a few months ago?
A. I'm not familiar with that.
Q. Were you at a settlement conference?
A. Oh, Miss Brown?
Q. Yeah.
A. Who is Miss Brown? I don't remember her.
Q. Lashawn Brown?
A. Lashawn Brown. Again, I have to recollect.
Q. Let me ask you this: Does Forster & Garbus keep track of the times that it's alleged to be executed on a vacated Judgment?
MS. LASTORINO: Objection to form.
A. I don't -- I wouldn't say there's a list, okay, but if it becomes an issue, it's something that's brought to our attention.
Q. What do you mean "becomes an issue"?
A. Well, in other words, a lawsuit or a debtor brings it to our attention.

Q. But my question is, specifically, does Forster & Garbus track the number of times that it is alleged to be collecting on a vacated Judgment?
A. No, not per se.
Q. It doesn't track the number of times Forster & Garbus has been sued for collecting on a vacated Judgment. Correct?
A. Not particularly for that instance, no.
Q. It doesn't keep track of letters from consumers where they allege that a Judgment has been vacated? Forster & Garbus doesn't collect that. Correct?
A. No. Well, there's general categories but I don't believe so, no, not separately for that.
Q. And Forster & Garbus doesn't keep track of even when consumers' attorneys contact them, like the Urban Justice Center did here, and tell Forster & Garbus that they're collecting on a vacated Judgment. Forster & Garbus doesn't track the number of times it gets those complaints. Right?
MS. LASTORINO: Objection to form.

A. Not that I know of.
Q. Why not?
A. Because I don't think -- I think it's a rare instance and so that it's not something that we would keep track of, but we would pay attention if we saw it as an issue. So, for example, one or two cases a year, if it did come up -- and it's not even that many -- then I don't think we would set up a policy to track that type of issue because it's not an issue that's come to our attention as being an issue, a real issue.
Q. Does Forster & Garbus have a specific policy to avoid collecting on vacated judgments?
A. We would never collect on a vacated Judgment if we knew it had been vacated. That would be our policy.
Q. Is there any other policy that Forster & Garbus has to avoid collecting on vacated judgments, other than what you just said?
A. No. My prior testimony speaks for itself on that issue.
MR. KESHAVARZ: Can you mark this,

please.

(Whereupon P-2, eCourts Printout, is marked for identification.)

Q. How long does it take, generally speaking, for Forster & Garbus to find whether or not a consumer is employed or has a bank account for Forster & Garbus to issue a bank restraint or a wage garnishment?

A. No set time. I have no idea. It would be -- in some cases, you find it, you know within a few months of a referral, you know, or of a Judgment and in some cases, it could be years.

Q. And what steps does Forster & Garbus take to determine if there's a place of employment or bank account to execute upon?

A. We use certain services that are provided to locate jobs and things like that in banks.

Q. And once that is located, how long does it take for the income execution or the bank restraint to go out?

A. Probably fairly quickly, you know, within a few weeks.

Q. And how long does it take to

prepare and issue those income executions or bank restraints?

A. Once they are requested, they're produced pretty much, you know, a day later or same day -- a day later or whatever.

Q. About how long does it take, just roughly speaking, to do that? Like for Mr. Callender, for example. They issued an income execution. How long did it take, typically, for Forster & Garbus to be able to issue an income execution or bank restraint?

A. I don't understand the question.

Q. So, you have the system in place where you find out if there's a bank account. Right? To be executed upon. Right? You have to verbalize your answer.

A. Yes.

Q. And there's a process to determine whether the consumer has a place of employment to garnish wages. Correct?

A. Yes.

Q. And once that information is obtained, what is the next step in collecting that Judgment?

A. I believe it would first be

reviewed by a supervisor, you know, to say, "okay," you know, confirm to issue the income execution and that would then be put through for processing to the data processing area, which would produce the actual document, which would then go to the attorney for review; and then issue to the judgment units to send out to the enforcement officer, the bank.

Q. When you say it's forwarded to the attorney for review, what review do you know the attorney is supposed to take?

A. They would look at the Judgment and they would, you know, see the information that's on the Judgment. There's a job. There's a Judgment date. There's Judgment information. Perhaps look at the notes on the account and then proceed with the signing of the execution.

Q. So, all the steps that the attorney would take in this attorney review you just talked about, all the steps the attorney would take is just to determine that they're executing on the right bank account or executing on the right employer. Correct?

A. Well, yes.

Q. They're not checking anything

else. Correct?
A. They might. You know, I can't speak for the individuals as to everything they may look at, but the answer is, generally, that would be the information. Again, the Judgment itself, the document itself could not be produced even if there was no judgment information, you know. So that they would rely on the integrity of the system to then issue the -- to sign off on the execution.
Q. But they would only look to see if there was a judgment for accounts that are -- new accounts that are placed for collection on judgments after November 2014. Correct?
A. I'm sorry. I misunderstood your question.
Q. This issue about checking judgments, that would only be checking to see if there's a Judgment in the file at the date of the placing of the account after November 2014, where the placement was after November 2014. Correct?
A. Well, it doesn't mean we didn't have copies of Judgment prior to 2014. We're talking, you know, a policy change but that

doesn't mean that on many cases prior to 2014, we did not obtain a copy and did not have a copy of the Judgment. I would say prior to 2014, in the majority of cases, we did have copies of the judgments.

Q. How do you know that?

A. Because I've been here since 2008, and based on the clients, I believe we had, you know, copies of judgments.

Q. So, how long does that whole process take, the issue the Judgment? Ten minutes? An hour?

A. What do you mean "issue the Judgment"? I don't understand.

Q. From the date that -- the time period to find the account, the bank account, to find the employer, for it to go through this supervisor. What does the supervisor do?

A. Well, the supervisor would look at the information and say, "Okay. Issue the income execution or the restraining notice." So they would review the account at that point.

Q. And by "okay," you mean the likelihood of it being profitable for Forster & Garbus to be able do that?

A. I wouldn't comment on that in that way at all.

Q. How would you comment on it?

A. I would comment on it to make sure that -- to look at the account to see if it's appropriate to issue an income execution or restraining notice, based on other factors, such as, as discussed before. It was a scrub done. Were there any disputes relative to the finding of that asset that would prevent the issuance of income execution or restraining notice. So, they would do that review and if it was clean, there's no military issue, that the person was in the active military, no bankruptcy, no deceased, nothing to indicate, you know, something that would prevent, stop it from going, you know, such as a recent dispute. For example, let's say we found a bankruptcy and somebody, just the day before, wrote a letter saying "I wasn't served with the summons." They may not issue the restraint.

Q. Do you keep track to determine if that happens that the consumer complains about service prior to issuing income execution or wage garnishment?

A. I don't keep track of that but the compliance department would keep track of any -- because if that was an issue then it would go to the compliance department and the compliance department would then respond to that dispute and would stop the -- you know, no income execution would go out at that point. If we had an income execution that had been issued, let's say, first stage and the person disputes service, we won't send it second stage. It would go to the compliance department.

Q. What's the second stage?

A. The second-stage income execution is the execution served by the enforcement officer on the job. The first stage is served upon the individual and that gives the individual an opportunity to dispute that income execution and dispute, you know, if he has a dispute regarding the Judgment prior to the service upon the job. So, in Mr. Callender's case, for example, presumably he was served with the first-stage income execution by the City marshal and yet, failed to respond to the City marshal by saying, "What's this Judgment? This Judgment was vacated," et cetera. He failed to do anything like that, which resulted in then the issuance of the second-stage income execution, the second-stage income execution upon this job, in which approximately $210.00 was deducted. Had he notified the sheriff or the -- the marshal, in this case, at first stage, that he was disputing the Judgment, he never knew about it, that would have stopped the execution, gone to the compliance department for investigation. He didn't do that in this case. He failed to mitigate any of his damages, or take steps to notify us that the Judgment had been vacated.

Q. So, in that respect, you're saying that it's his fault?

A. I'm sorry. What?

Q. In that respect, you believe it's his fault?

A. I believe there's a lot of fault on Mr. Callender in this case. We'll go back to the Department of Consumer Affairs when he failed to notify the Department of Consumer Affairs, in his complaint, that he was disputing a Judgment, which he should have been well aware of, based upon numerous letters that had been sent to him. He failed to say anything about the Judgment at all. In fact, alleged that he never had a Discover card; and in this case, also, with the income execution, the whole idea of providing a first-stage execution to the consumer himself without going to the employer is to give the consumer an opportunity to make voluntary payments, or in the case of a dispute, he could dispute it; and, as I said, we would then stop the execution until we had a chance to investigate that dispute.

Q. Well, let me make sure I'm clear. Does Forster & Garbus track the number of times it gets complaints by consumers saying, "You're attempting to collect on a vacated Judgment"?

A. I don't know -- I don't think specific to that because I don't think that instance arises. Okay. We may keep track on people who say they were never served with the summons.

Q. Okay. So, you have -- you have a number of times that consumers -- you keep track of the number of times that consumers contend that they were never served with the Judgment you are collecting on. Right?

A. I'm not sure. I would have to -- I know there are some general categories and I don't know if we just keep numbers or we just categorize it, you know, as to the nature of the complaint; but I don't think there's one specifically for vacated -- judgments previously vacated and the reason for that is because it's not a common instance.

Q. What did you keep track of the number of times that the consumer says you're collecting on a Judgment where they have never been served?

A. I don't know the number.

Q. Does Forster & Garbus track that?

A. When you say "track it," what do you mean?

Q. Does Forster & Garbus track how often consumers claim that you're attempting to collect on a Judgment where the consumer was never served?

A. We might have some statistics on that or at least, you know, we can -- there may be some statistics.

Q. How often does that happen?

A. I don't know.

Q. So, there would be some statistics on that?
A. Perhaps.
Q. By who?
A. Ann Visecchia.
Q. So, you say "categories and statistics." What do you mean by "categories"? Categories of disputes by consumers or what do you mean?
A. By consumers, yes.
Q. Categories of disputes by consumers of what?
A. Well, it could be balance, you know. "I don't owe the balance." "I don't owe the account." Or challenge the balance. That might be a category. "Never served with the summons." We may have them just by people who request documentation. So, these would be broad categories.
Q. And these categories are kept because some the creditors that you collect for require tracking of this information?
A. Not that I know of, no. I don't believe that's the case.
Q. Do you have any idea whatsoever

about how many times consumers contended that Forster & Garbus was collecting on a Judgment where they were never served?

MS. LASTORINO: Objection.

A. I don't know.

Q. Can you obtain that information?

A. I might be able to.

Q. How long would it take you to find out?

A. Well, let's -- I may be able to tell you how many people claimed they were never served. I'm not saying that I can provide you with any statistics on how many people say they were never served and where monies were being collected.

MS. LASTORINO: And again, I'm going to object on the scope of that as exceeding the limitations. You're asking for --

MR. KESHAVARZ: You never moved to quash on that ground. You only moved to quash on the number --

MS. LASTORINO: He made the Order clear as to what the scope of discovery is, as to due diligence on this action.

MR. KESHAVARZ: You're mistaking.
MS. LASTORINO: No, I'm not. So, I object to the request.
MR. KESHAVARZ: Okay. Objection to the form of the question.
Q. So, how long would it take for you to find out this category of the number of times that consumers contend you're collecting on a Judgment where they were never served?
MS. LASTORINO: Objection.
Q. You can answer.
A. I'm sorry. What?
Q. You can answer.
THE WITNESS: Can I answer?
MS. LASTORINO: Actually, I'm seeing this exceeding the scope of the Judge's Order.
Q. Okay. You can answer the question.
MS. LASTORINO: No, because --
MR. KESHAVARZ: You can get the Judge on the phone, if you to ask --
MS. LASTORINO: I guess we're going to have to.
MR. KESHAVARZ: He said that he

keeps track of this. I'm asking -- so, he's answered that question. The question is how long would it take you to find out that information. He's already answered the question on the subject. So, the question is how long would it take you to find out that information.

MS. LASTORINO: Is that what the last question was before this?

MR. KESHAVARZ: Regardless of that, let me just ask you the question.

Q. How long would it take you to find out how many times that Forster & Garbus has been collecting on a Judgment where the consumer contends that they were never served? How long would it take you to find that out?

MS. LASTORINO: You can answer how long. You can answer that question.

A. Probably not too long.

Q. A few minutes?

A. Well, maybe -- maybe more than that but, you know, maybe before the end of the week -- or the end of the day. Is that what you're looking for?

Q. I'm just asking. The question is

this: You talk to your IT person. You say, "Hey, how many complaints do we get from consumers contending that we're collecting on a Judgment where they were never served?" How many is that? How long does that take? A few minutes? Half an hour?

A. Maybe, perhaps.

Q. Would you be willing to obtain that information during lunch?

MS. LASTORINO: Objection.

Q. You can answer. My question is would you be willing to obtain that information during lunch?

A. Well, I would be willing to see if that information is available.

Q. Okay.

A. And if so, I'll make -- now, I don't know if --

MS. LASTORINO: I'm going to object that the information --

MR. KESHAVARZ: Wait. He's in the middle of an answer.

MS. LASTORINO: I'm sorry. You can finish.

A. You're categorizing in such a way

and I'm not agreeing that your characterization is correct. Okay. So that you're saying "on judgments." We might not break it down by judgments. It might just be disputes where people allege lack of service, not breaking it down, judgment versus non-judgment.

Q. Is there some sort of a --

MS. LASTORINO: I was saying an objection. I let him finish. So, my objection is --

MR. KESHAVARZ: Wait. Go ahead.

MS. LASTORINO: My objection is, this line of questioning is exceeding the limitation in Judge Hellerstein's September 22, 2016 Order, which specifically said it's due diligence on the Callender matter.

MR. KESHAVARZ: May I?

MS. LASTORINO: Sure.

THE WITNESS: Maybe we should get Hellerstein on the phone.

MS. LASTORINO: We'll do that.

MR. KESHAVARZ: What's that?

MS. LASTORINO: We will get Hellerstein on the phone.

MR. KESHAVARZ: Mark that for a decision by the Court.

He already said he could check it during the lunch.

THE WITNESS: Well, I could withdraw that.

MS. LASTORINO: I objected to it, so.

THE WITNESS: Since there's going to be an objection and since you're saying it's going to be on the record, then there's no reason for me to do so until the Judge orders it.

MS. LASTORINO: Right.

THE WITNESS: So, that's my position at this point.

MR. KESHAVARZ: All right. If we have to retake the deposition, we'll have to retake the deposition.

THE WITNESS: That's fine. I'm available, and it won't require a deposition because it will require a number.

BY MR. KESHAVARZ:

Q. Can you identify what Exhibit No.

2 is? Well, let me just ask you. Is that the eCourts' printout for --
MS. LASTORINO: Can you identify it for the record, so it's clear?
Q. Well, let me ask you, is that a copy -- well, I'm identifying it as a copy of the eCourts printout for Mr. Callender's account, the judgment account that Forster & Garbus was executing on. Is that what it appears to be?
MS. LASTORINO: Excuse me. I just want to let the record reflect, since you didn't say the date, this exhibit, it has a date on the bottom of 9/27/2016, 7:34 p.m.
MR. KESHAVARZ: It says what it says.
MS. LASTORINO: I just want the record to reflect that.
Q. Okay. The question is, is that the eCourts -- does that appear to be the eCourts' listing for the lawsuit where you were attempting to execute on a vacated Judgment? Right?
A. Yes.

Q. So, if Forster & Garbus checked and spent the 30 seconds, 60 seconds, two minutes, to look up eCourts, would Forster & Garbus have executed my client's wages?

MS. LASTORINO: Objection.

(Whereupon the witness reviews the document.)

A. No.

Q. Why not?

A. Because it indicates the Judgment had been vacated.

Q. Any other reason?

A. Not that I know of, not that I can see, based on this.

MS. LASTORINO: I have a question on the exhibit because you have a Bates stamp at the end that wasn't produced to me and it was actually -- it was printed yesterday. So, I would like to have documents made available to me, if you're showing them to the witness, and you should be current with your production.

MR. KESHAVARZ: Okay.

MS. LASTORINO: Okay. And if there are other documents, too, after the

Bates Stamp 215, then I would like to have all of those records. I should have had them already, before today.

MR. KESHAVARZ: Understood.

You can mark this as an exhibit.

(Whereupon P-3, Order to Show Cause - Pfau vs. Forster & Garbus, et al, is marked for identification.)

Q. Please, review Plaintiff's Exhibit No. 3 and let me know when you're done.

(Whereupon the witness reviews the document.)

MS. LASTORINO: Excuse me, Ahmad. I don't have any of these documents.

MR. KESHAVARZ: Understood.

MS. LASTORINO: Well, you've been taking -- I've been very tolerant with you on producing documents to you and you know that. How are we arriving at a deposition and the day of, you're just putting into evidence Bates-stamped documents that I have never received before today?

MR. KESHAVARZ: Understood.

Q. Review Exhibit 3 and let me know

when you're done.

MS. LASTORINO: And I just want the record to reflect that I should have received these documents prior to today and it's not conducting discovery in good faith just to be producing them now.

Q. Go ahead. Let me know when you're done, please.

THE WITNESS: Let me get a drink of water.

MR. KESHAVARZ: Take your time.

(Whereupon there is a brief recess.)

MS. LASTORINO: I'm going to reserve my right to move to preclude plaintiff's reliance on what he's marked as Deposition Exhibit P-3, insofar as he's just producing this document today and has never served it on defense counsel prior to today, notwithstanding his obligation that he should have served every document in his client's possession, custody or control or anything else that plaintiff intends on using as an exhibit at today's deposition.

BY MR. KESHAVARZ:

Q. Please, review Exhibit No. 3 and let me know when you're done, please.

A. I'm done.

Q. Can you identify what the document is?

A. It's called an Order to Show Cause in the Matter of the Petition of the Honorable Ann Pfau against various defendants, Index No. 2009-8236, in the Supreme Court of County of Erie.

Q. Who is the first defendant?

A. Unfortunately, Forster & Garbus.

Q. So, the filed lawsuit contended that Forster & Garbus and others were using process servers that were systematically filing false Affidavits of Service. Isn't that correct?

MS. LASTORINO: Objection to form.

A. Yes.

MS. LASTORINO: Just let me object, first.

THE WITNESS: I'm sorry.

MS. LASTORINO: Go ahead.

A. Yes.
Q. So, is it common for consumers to file Orders to Show Cause to vacate judgments that they collect -- they contend -- strike that.
What steps did Forster & Garbus take, if any, in response to the Pfau lawsuit?
A. We responded to the Order to Show Cause.
Q. And what policies and procedures did Forster & Garbus change in response to the Pfau lawsuit?
MS. LASTORINO: Before we proceed, I'm going to object on the grounds that -- along with my other objections -- that this is not relevant. It's not likely to lead to relevant evidence. It's just solely designed to harass.
Also, can I please have the production of other documents right now, before we proceed because I see that my Bates stamp ends at 214 and I see that this picks up at Bates Stamp 235.
THE WITNESS: What does yours end at?

MS. LASTORINO: 214.
MR. KESHAVARZ: I provide to opposing counsel, documents Bates stamped Callender 215 to Callender 303. As opposing counsel has noted, looking at page 215, was eCourts web printout that was created last night.
MS. LASTORINO: So, 214 to -- did you say, to 303?
MR. KESHAVARZ: 215. You have 214.
MS. LASTORINO: 215 to 303, you said?
MR. KESHAVARZ: That is correct.
MS. LASTORINO: Okay. So, we're going to have to take a break now. I'm going to look at the documents because these should have been produced prior to today and I have a right to see the rest of the document production.
MR. KESHAVARZ: All right. Well, let me just ask him a question.
MS. LASTORINO: I want to look at the documents.
MR. KESHAVARZ: Look at the

documents. Take your time. It's nothing earth shattering.

MS. LASTORINO: What's earth shattering is you're not conducting discovery in good faith. You like to be right on top of everyone else, if they're a second late with discovery, but yet, you come to a deposition with numerous documents. I mean we're going from 215 to 303 without even serving them on me before the deposition even started. You just take documents out, you mark them as exhibit, without ever seeing them before, on my part. That's really, really not conducting discovery in good faith and I reserve all my rights to make a motion to the Court for whatever the Court deems appropriate.

Q. Will you turn your attention to Exhibit 3, I believe Bates stamp --

MS. LASTORINO: Just a minute.

MR. KESHAVARZ: You can actually look at the exhibit, if you like. It's the same document.

MS. LASTORINO: And this is

subject to my other objections, too. In addition to the objection that this really, again, exceeds the scope of the Judge's Order. How does this have anything to do with due diligence on Callender's matter?

MR. KESHAVARZ: Are you done?

MS. LASTORINO: Well, I'm asking. I don't believe this is proper questioning.

MR. KESHAVARZ: I understand.

Q. Will you go on Exhibit 3 to page 254 and let me know --

MS. LASTORINO: Subject to those objections, without waiving anything, you can take a look at the exhibit.

Q. Exhibit 3, page 254.

MS. LASTORINO: And please, your hand gestures. Keep them to yourself. Don't give me the rush-along hand gesture. Okay? And let the record reflect that that was happening.

MR. KESHAVARZ: I'm not sure what that means, but okay.

Q. When you're done --

A. I'm done.

Q. Have you had a chance to review Exhibit 3, Callender 254?

A. I'm sorry. What?

Q. Have you had a chance to review that document?

A. Yes. I'm just looking at it, yes.

Q. All right. Let me just ask you, regardless of what the document says, the Pfau lawsuit contends that there were instances of -- you know, hundreds of instances where process servers claimed to be at the same place at the same time. Right?

MS. LASTORINO: Objection.

A. I wouldn't say hundreds of times because the exhibit you're presenting does not show hundreds of times.

(Whereupon there is a brief interruption and the reporter asks the witness to repeat his answer.)

MS. LASTORINO: Would like the question read back?

THE WITNESS: I'll step back from that.

A. Yes, I looked at the third column.

I didn't look at the second column, yes.

Q. But the general question is -- I think you answered it already, but since you had a pause in between --

A. Yes, I answered it.

Q. Let me make sure the question is clear. So, the Pfau lawsuit contended that Forster & Garbus and other debt collectors, other debt-collecting law firms were using process servers that systematically executed false Affidavits of Service. That is, the allegation was that the process server claimed to be at one location serving when that wasn't true. Is that, in a nutshell, what the Pfau lawsuit was about?

MS. LASTORINO: Objection to form.

A. Yes.

Q. In response to the Pfau lawsuit, what changes, if any, did Forster & Garbus make to its policies and procedures?

MS. LASTORINO: Objection.

A. We engaged process servers. We insisted that process servers use GPS and photo. When they went out to serve, they were required to have smart phones and take pictures, you know. We also review -- we have review of the information in terms of -- well, first of all, even before the Pfau lawsuit and afterwards, in terms of times of service, you know, so that the service had to be spread out. Not just at the same time every day. It would have to be served, you know, one time -- if there were more than one attempt, attempts in the morning, attempts in the afternoon, attempts in the evening. The process servers are required to take pictures of and have GPS coordinates to review the affidavits of service. You have to understand something about the Pfau lawsuit. The Attorney General spent an awful lot of money and time and was able to do it because they had the ability to go into court and coordinate service information from various attorney law firms, you know. So that it became evident that a person who was in two locations at the same time wasn't necessarily on a Forster & Garbus or a Cohen & Slamowitz case. It could have been a Forster & Garbus and a Wolpoff & Abramson case. So that the -- you know. So, it was a tremendous amount of investigation to come up with this. The result was a consent order, which speaks for itself, and there was implementation of certain changes, such as I said, with the process servers taking pictures, taking GPS coordinates, that kind of information; and limiting, you know, again limiting the times they could serve and telling them they could only serve at certain times of the day.

Q. Okay. Do you believe the allegations in the Pfau lawsuit as to the process servers reporting -- well, strike that.

Let me just ask you this: It's common for -- strike that.

What is "sewer service"?

MS. LASTORINO: Objection to form.

A. Sewer service is commonly meant that service which was not properly effectuated but a false affidavit, in effect, was made by the process server. So, they call it sewer service because it would be as if you threw the summons down the sewer.

Q. So, in the Pfau lawsuits, the documented hundreds of times where the process servers had filed sewer service affidavits. Correct?

A. Yes.
Q. And are you aware of the Sykes Class Action against Mel Harris?
A. Yes.
Q. And it's your understanding that as part of the settlement that Mel Harris now are vacating a hundred and ninety thousand judgments based on systematic sewer service?
A. Whatever the number is.
Q. Is that roughly correct?
A. I understand there were judgments that had to be vacated. I have no idea about the numbers.
Q. Would you say it was a mass number of vacation of judgments?
A. I won't comment on that because I haven't read the Sykes case in years.
Q. So, were you aware of the class action settlement?
A. Yes, Leucadia, yes.
Q. And part of the settlement is they're going to vacate a bunch of judgments?
A. Right.
Q. The allegation was that Samserv was filing maybe a hundred thousand false

affidavits of service so Mel Harris could get a Default Judgment based on that false affidavit of service. Is that basically your understanding of what Sykes is about?
MS. LASTORINO: Objection to form.
A. Yes.
Q. Now, given the widespread allegations of sewer service, orders to show cause to vacate judgments are fairly common. Correct?
A. And less common today after the Pfau decision.
Q. But before the Pfau decision -- when was that?
A. 2010, I think was the -- it was a 2009 index number. I think it was settled in 2010, if I remember.
Q. So, up to the Pfau decision, it was common for consumers to file orders to show cause to vacate judgments because they contend they were never served. Right?
MS. LASTORINO: Objection to the form.
A. Say that again? Repeat the question. Did you say "after the Pfau

decision"?

Q. Well, let me ask, up to the Pfau decision, was it fairly common for consumers to file orders to show cause to contend that they were never served with the summons and complaint?

MS. LASTORINO: Objection to form.

A. I don't know what you mean by "common." You know, it all depends on number of suits versus number of orders to show cause. It was always orders to show cause filed pre-Pfau, post-Pfau, okay, on that issue. That's not an uncommon issue to be found before the Court. Were there more cases percentage-wise before Pfau than after Pfau, I would say probably, you know, and that would be my best guesstimate. Okay. Because now the process servers themselves are held, you know, after Pfau with the picture-taking. We know they have to go out there because we don't -- you know, we insist on seeing the pictures. We insist on getting those pictures and the GPS coordinates. So that -- and then subsequently, the Department of Consumer Affairs licensed process servers in New York and imposed very strict rules. So, the result is that I think there are probably less orders to show cause on the issue of service of summons than there was pre-Pfau.

Q. For summonses that were served after Pfau. Right? I mean if the summons was served ten years ago, there would still be --

A. Yes. I guess you could classify it.

Q. So, the question is clear, when your saying it's less common, you mean less common for judgments that are entered after Pfau than before Pfau. Right?

A. Yes. Less orders to show cause, yes, after Pfau, yes.

Q. But for judgments that were entered prior to 2010, for those judgments, it was fairly common for consumers to file orders to show cause, contending that the process server never served them. Right?

MS. LASTORINO: Objection to form.

A. And again, I don't know what the word "common" means. You know, if there's a hundred thousand lawsuits and a thousand orders to show cause, is that common? It's, obviously, based on a percentage. So, what you say is

common, is that 50 percent or is it 1 percent?
Q. And what do you think? For judgments pre-Pfau?
A. It certainly is a small percentage-wise of the number of judgments that are entered that are challenged. Number-wise, you know, if you sue a hundred thousand people, you're going to get a certain level. If you sue two hundred thousand people, you might get twice that level, but as a percentage, you know, it still might be a small percentage.
Q. Does Forster & Garbus treat judgments that were entered prior to Pfau differently than judgments that were entered after Pfau?
MS. LASTORINO: Objection to form.
Q. In terms of executing on those judgments.
A. No.
Q. Okay. Why not?
A. Because a judgment is a judgment is a judgment. A judgment is good for 20 years. If I have no reason to believe that that Judgment -- you know, if I believe that there's a Judgment that's enforceable, then it's

enforceable. Whether it was entered ten years ago, eight years ago, three years ago, you know, two years ago, there can be issues as to the particular Judgment. That would be true pre-Pfau, post-Pfau. A person alleges he wasn't served and says he wasn't living at that address and produces evidence that he wasn't living at that address, it doesn't matter if it was pre-Pfau or post-Pfau. We would treat it the same way. We would ask him to show proof that he didn't live at that address.

Q. And then what?

A. Then we might vacate -- probably vacate the Judgment.

Q. Do you know how often -- let me ask you this. For judgments that were searched -- strike that.

For judgments that Forster & Garbus collects where Forster & Garbus is not the attorney that got the Judgment, but 3500 new accounts a year, does Forster & Garbus keep track of how many orders to show cause are filed for those 3500 or so judgment accounts Forster & Garbus gets each year?

A. No.

Q. But for the judgments -- including the judgments -- those 3500 judgment accounts you get every year, were you saying that Forster & Garbus -- correct me if I'm wrong -- that Forster & Garbus keeps track of complaints for consumers that they were never served with those summons and complaints for those judgments?

MS. LASTORINO: Objection to form.

Q. Are you saying you did or you didn't keep track of that?

A. I said that if a person disputes that may be a category that our compliance department might be able to produce a number of complaints that fall into a category of disputing service.

Q. But why doesn't Forster & Garbus -- strike that.

By disputing service, you mean phone calls or letters by consumers. Correct?

A. Disputing --

Q. Well, by disputing service, this characterization that you --

A. It's that a person makes a complaint saying I was never served with the summons.

Q. Okay. But of those complaints -- strike that.
Are you talking about complaints that are orders to show cause or not orders to show cause?
A. No. Things that would go through compliance, not orders to show cause.
Q. Okay. If Forster & Garbus keeps track of complaints where consumers say they were never served the collection lawsuit that you're executing on, why do you only keep track of it if there's no Order to Show Cause that's found?
MS. LASTORINO: Objection to form.
A. The answer is one goes to the compliance department and one goes to the legal department. It's a different category. Those are legal cases and we know the number of orders to show cause that were filed.
Q. How many?
A. I don't know.
Q. So, I guess -- are you saying you do know the number of Orders to Show Cause that are filed to vacate judgments that Forster & Garbus have collected. Correct?

A. Yes, we would know the number of Orders to Show Cause served upon the firm, yes. We keep track of how many Orders to Show Cause we get monthly.

Q. And how many are they?

A. I have no idea.

Q. Okay. But those are the only instances where Forster & Garbus -- strike that.

That raises another question I wanted to ask. The original law firm here was either Wolpoff & Abramson or -- I think it was Wolpoff or Mann Bracken, whichever one it was. Mann Bracken, Wolpoff & Abramson, they suddenly imploded and abandoned all these collection lawsuits that were being filed. Right?

A. I believe so, yes.

Q. They have abandoned tens of thousands of cases -- collection lawsuits that had been filed, of which, they have abandoned tens of thousands of cases.

MS. LASTORINO: Objection to form.

A. When you say, "abandoned," I understand they went out of business or something like that.

Q. But they didn't -- so, the cases where they were the attorney of record, those big cases just languished after Wolpoff & Abramson and the other firm shut down. Right?

A. I have no idea what happened with the cases.

Q. Wolpoff & Abramson and what was the other one?

A. Mann Bracken.

Q. Mann Bracken, yes. So, does Forster & Garbus track to see if the law firm that got the Judgment -- it was either Wolpoff & Abramson or Mann Bracken, for the accounts it gets for judgment collection, where Forster & Garbus didn't obtain the Judgment, does it keep track of who the law firm was that got the Judgment?

A. Not that I know of.

Q. Not just for Wolpoff & Abramson but Mann Bracken. Forster & Garbus doesn't keep track of any of the law firms that obtained the Judgment for which Forster & Garbus collected?

MS. LASTORINO: Objection to form.

A. Not a separate characterization, no.

Q. So, if there -- strike that.
Forster & Garbus didn't file Notice of Substitution in Mr. Callender's collection lawsuit. Correct?
A. Correct.
Q. And is it your firm's policy to not file attorney substitutions in the Court file if it is a judgment account that's placed with Forster & Garbus?
MS. LASTORINO: Objection to form.
A. We've changed our procedures over the years and we always wanted to file substitutions of attorneys, if we could and we do so now; and if we need to file Notice of Appearance as counsel for plaintiff or Substitution of Attorney, we do so, you know, but not as much as in the past.
Q. By doing so, you mean doing so in judgment account cases where -- let me just use shorthand. When I say "judgment account cases," will you understand that to mean where a judgment is obtained by a firm other than Forster & Garbus?
A. Yes, if you define it as such.
Q. And that's generally how you've

understood I've been using the term "judgment accounts"?
A. Yes, um-hum.
Q. So, are you saying for judgment accounts, it's now the policy of Forster & Garbus to file a Notice of Appearance or Substitution of Counsel for all of the judgment accounts it's collecting?
A. Yes.
Q. Is it only the new judgment accounts it's collecting or the prior ones or the ones that was -- strike that.
Is it only the judgment accounts that were placed after a certain date or is it all judgment accounts that Forster & Garbus is collecting on?
A. Placed after a certain date.
Q. When was that date?
A. Approximately 2014 or 2015, probably.
Q. Around that November 2014 date, something like that?
A. Yes, somewhat, you know, and again, we had -- you know, not that we weren't doing that beforehand but more so afterwards.

Q. It was the policy and procedure after November of 2014?
A. Yes.
Q. To provide -- to file a Notice of Appearance or a Substitution for judgment accounts. Correct?
A. Um-hum.
Q. Say, "yes" or "no."
A. Yes.
Q. But it wasn't policy or procedure before that point?
A. Right.
Q. All right. Do you know or do you not know what percentage of judgment accounts placed prior to November 2014, that Forster & Garbus made a Notice of Appearance or Substitution on?
A. No, I dot no.
Q. When you file Notice of Appearance or Substitution, do you serve the consumer with that Notice or that Substitution?
A. You know, I don't know the answer to that.
Q. Because if you filed the Notice or the Substitution in the court file, Mr.

Callender could have served you a copy of the Order to Show Cause. Right?

MS. LASTORINO: Objection to form.

A. I guess he could have, as he could have since he was well aware of our firm's involvement in the case and he knew we were seeking to collect the Judgment.

Q. Well, it says in the Complaint that he was confused. He didn't know which account you were guys were collecting on because he just vacated the Judgment. Can you understand why a consumer would be confused by that or no?

A. I don't have any idea.

Q. All right. Why is it Forster & Garbus's policy now to file Notice of Appearance or Substitution -- Substitution of Counsel?

A. I think we, as better practice, we always seek to go and improve our -- you know, our practices.

Q. In what way do you believe that improves your practice?

A. Well, this case is something that would say, "maybe we should do that more." "Maybe we should make sure we do that."

Q. So, you're saying one of the triggers for the change in policy was Mr. Callender's lawsuit?
A. Well, no, I'm not saying that but I'm saying a case like this would, you know.
Q. Would what?
A. Would, you know, show that maybe we learn from, you know, as we go along. So, it just brings to our attention.
Q. When you start doing this, consumers can start serving you with the Order to Show Cause to Vacate. Right?
A. Right, but it hasn't been a problem. With the exception of a few cases, I don't know where that's been an issue.
Q. Because you don't keep track of it?
A. But I can observe. I know what -- you know, without keeping actual records of it, I have a general understanding of how often these things arise. We don't have to have, you know, strict numbers to know that there are problems.
Q. So, to your recollection, the only times Forster & Garbus has been sued for

collecting on a vacated Judgment was from Mr. Callender and Mr. Francis. Right?

A. I guess, you know, I guess.

Q. To your recollection, there aren't any other instances where that's happened?

A. To my recollection, no.

MR. KESHAVARZ: Mark that, please.

(Whereupon the document is marked P-4 for identification.)

Q. Sir, if you can take a look at Exhibit No. 4. Let me know when you're done.

MS. LASTORINO: I'm going to just reiterate the same objections I had when plaintiff's counsel introduced the other documents into evidence. I won't go through the whole litany but I'm preserving the same objections and motions.

(Whereupon the witness reviews the document.)

A. Okay.

Q. Is that the Brown lawsuit against Forster & Garbus for executing on a vacated Judgment?

A. Yes.

Q. That's Bates stamped Callender 263 to Callender 303. Correct?

A. You're asking me?

Q. Yes.

A. 263 to 303, yes.

Q. Why was Forster & Garbus executing on the vacated Judgment?

MS. LASTORINO: Objection to form.

A. I won't answer that.

MS. LASTORINO: I'm objecting on, again, this is just designed to harass. There is nothing relevant as to this. He's answering your question as to what was due in the Callender matter, as per the Court's Order.

A. And that case was probably settled and it was settled and --

MS. LASTORINO: Not -- I'm sorry. Go ahead.

A. And it's probably a confidentiality agreement. I'm not going to answer this. The case speaks for itself. It's a public record.

MS. LASTORINO: Excuse me. Also objecting on your -- I guess this was your intention of your surprise tactic, I guess, to not give someone notice before. So, that's really, really not in good faith and, in my opinion, sanctionable. We'll leave it up to the Court.

Q. So, you say the reason why -- one of the reasons why you executed on the vacated Judgment as to Mr. Callender is that you didn't know, the client never told you, and Mr. Callender never told you that the Judgment was vacated. Right?

MS. LASTORINO: Objection to form. Go ahead. You can answer.

A. Primarily, yes.

Q. And what is the reason that Forster & Garbus executed on Miss Brown's -- executed against Miss Brown for a Judgment that had been vacated, as per Plaintiff's Exhibit 4?

MS. LASTORINO: Objection. We could mark it for a ruling. This is beyond the scope.

A. Since the complaint speaks for itself and the case was settled and since I can't remember the specifics of that case, I can't comment.

Q. Well, you can --
A. I can't comment on it because I don't remember the specifics of the case and I'm not going to now, being surprised by this, have to, all of a sudden, do any investigation.
MS. LASTORINO: Right. If you want to call the Court, let's do it right now.
MR. KESHAVARZ: Call the Court for what?
MS. LASTORINO: We are objecting to this line of questioning on a document that has nothing to do with Callender's case, on something you just surprised us with. Let's get the Judge's opinion on it.
MR. KESHAVARZ: He testified that it only happened to Callender and Francis. Now, we know that it happened again. So, I'm trying to figure out how many times Forster & Garbus has been sued for executing a vacated Judgment.
MS. LASTORINO: I think the document speaks for itself. He told you he doesn't have a recollection of it, so.

Q. Please, review Exhibit No. 4 and let me know when you're done.
MS. LASTORINO: Which one?
MR. KESHAVARZ: Exhibit No. 4, please.
A. That's the Brown thing.
MS. LASTORINO: Oh, no. I'm objecting. Let's mark it for a ruling.
Q. Please, reviews Exhibit No. 4 and let me know when you're done.
A. On advice of my attorney, I'm not going to review it.
MR. KESHAVARZ: Is there any basis for the objection, other than what you've stated?
MS. LASTORINO: I stated several objections.
MR. KESHAVARZ: All right. Let's make sure the record is clear. What's the basis for the objection for me not being able to ask the witness to review Exhibit 4?
MS. LASTORINO: Okay. You know what? Review the exhibit.
(Whereupon the witness reviews the

exhibit.)

A. All right.

Q. What was the reason for executing on Miss Brown's -- executing on a vacated Judgment as to Miss Brown?

MS. LASTORINO: Objection.

A. I won't answer that.

MR. KESHAVARZ: Basis?

MS. LASTORINO: He testified before that he wasn't aware of it. So, you're asking him to speculate.

MR. KESHAVARZ: No, no.

MS. LASTORINO: The allegations are allegations, Ahmad. You're asking him to give credence to the allegations of a document that he says he's not aware of.

Q. Did Forster & Garbus execute on a vacated Judgment as to Miss Brown, as per Exhibit 4?

MS. LASTORINO: Objection. Asked and answered.

MR. KESHAVARZ: Not answered.

MS. LASTORINO: He said he doesn't know.

MR. KESHAVARZ: You know, if you have an objection to form, that's fine.
Go ahead. You can answer.
MS. LASTORINO: The objection to form is that it was asked and answered.
MR. KESHAVARZ: Objection to form preserves all of those organizations.
Q. So the question is well, pointing your attention to Exhibit 4, the Brown complaint against Forster & Garbus. Why did Forster & Garbus execute on a vacated Judgment as to Miss Brown?
A. I can't answer the question why. You can ask me whether or not we did. The answer is yes. That's obvious from the Complaint and the case, but I can't answer why. I don't know the facts of case now. It goes back awhile.
Q. It was it filed in 2015?
A. Yeah.
MS. LASTORINO: Again, these are someone's allegations. So, I object to you asking him the credence of somebody's allegations in a complaint.
Q. The suit was filed in August of

2015?

A. This case has been settled. So, it was settled and it speaks for itself.

Q. It was settled in the last few months. Right?

A. It was settled, though. It was settled and it speaks for itself. So, I don't have to go in -- I don't have to relitigate a case that's already been litigated, and that was involved in a lawsuit that was settled to the satisfaction of Miss Brown and her attorney.

MS. LASTORINO: And again, I object because this lawsuit has nothing to do with the due diligence that was conducted as to Callender's case, which the Judge made clear is the scope of discovery here.

Q. Wait a minute. Let me make sure Forster & Garbus's position is clear here. Are you saying it doesn't matter how many times Forster & Garbus was sued on vacating a Judgment, that has no relevance at all as to any issue for Mr. Callender? Is that Forster & Garbus's position?

MS. LASTORINO: Objection to form.

A. I'm saying on this case, that there's no reason for me to comment onto the why's and wherefore's on a case that's been sued and settled. That's my answer.
Q. All right.
A. That's my answer.
Q. Does it matter to Forster & Garbus how many times it's been sued on collecting on a vacated Judgment in terms of its defenses to Mr. Callender's case?
MS. LASTORINO: Objection to form.
Q. You can answer the question.
MS. LASTORINO: I'm sorry. Did the beginning of that question -- can you read it back because I thought it said "does it matter," but I'm not a hundred percent sure.
(Whereupon the last question is read back by the reporter.)
MS. LASTORINO: I'm objecting to that question. That is so argumentative. Why don't you rephrase your question.
Q. You can answer the question.
MS. LASTORINO: It's argumentative.

MR. KESHAVARZ: That's fine.
You've preserved that objection by objecting to the form of the question.
You may answer the question.
A. I really have trouble in answering the question. It's so broad. When you say, "Does it matter?" What does "matter" mean? Well, we're always concerned if there are problems with an account. So, in that sense, it matters. Does it matter as to the individual case that we're talking about here where Judge Hellerstein has ruled that it's specific to that case? No, I guess it doesn't matter because Callender's case stands alone, as to the issue of whether or not we proceeded on a vacated Judgment on Callender. So, you know, that's how I'll answer that question.
Q. Putting aside whatever Judge Hellerstein may have or may not have ruled, is it Forster & Garbus's position that it is not relevant to Mr. Callender's claims whether Forster & Garbus have been sued once or a hundred times for collecting on a vacated Judgment? Is that Forster & Garbus's position, prior to executing on Mr. Callender's wages? Is

that Forster & Garbus's position?

MS. LASTORINO: Objection to form.

A. And again, I have a question with the relevancy, you know, in terms of, you know, numbers. Does -- you throw out a figure of three and then you throw out a figure of a hundred. Well, a hundred is a lot different than three. A thousand is a lot different than three. Four thousand is a lot different than three. So, in terms of Mr. Callender's case, you know, just as in other situations, there could be a problem here and there. If it's not an endemic problem, then it may not be relevant to Mr. Callender's case, which is a fact-specific case. That's what you sued us on. That is the case at hand. That is the case that's relevant here. That's Forster & Garbus's position. We'll address the issues in Callender.

Q. Just so I'm clear, you're saying that it's Forster & Garbus's position it's not relevant how many times -- it's not relevant to Mr. Callender's case or your defenses to Mr. Callender's case, how many times Forster & Garbus has been sued previously for executing on a vacated Judgment?

MS. LASTORINO: Objection. You're putting words in his mouth.

A. Right. I'm not going to answer that. Let the Court decide what's relevant.

Q. Do you understand the question?

A. No, not really.

Q. All right. Well, let me rephrase the question. I'll be glad to.

Is it Forster & Garbus's position that it's not relevant to Mr. Callender's claims or Forster & Garbus defenses as to how many times Forster & Garbus has previously been sued for executing on a vacated Judgment?

A. I'm not in a position to comment on whether it's relevant or not, on behalf of Forster & Garbus.

Q. Forster & Garbus doesn't have a position either way?

MS. LASTORINO: What was the question?

Q. Forster & Garbus doesn't have a position either way?

A. I think that's what this is -- you brought this case. I don't have a decision on

it, as to whether or not. Okay.
MR. KESHAVARZ: You can mark that, please.
(Whereupon the document is marked P-5 for identification.)
Q. Please, take a look at Exhibit No. 5 and let me know when you are done, sir.
(Whereupon the witness reviews the document.)
(Whereupon there is an off-the-record discussion.)
MR. KESHAVARZ: You know what? We can just take a break for lunch now and come back in about an hour. Off the record.
(Whereupon the lunch recess is taken.)
BY MR. KESHAVARZ:
Q. Good afternoon. So, Mr. Callender's account, judgment account, was with Forster & Garbus for about six years. Right?
A. Yes, approximately.
Q. Is that about average for judgment accounts to be with the firm?
A. I wouldn't say there's an average

because it depends on the client. Some clients recall judgment. So, it depends on the activity. So, it varies. There's no, quote, average. You know, some clients leave us with the accounts, pretty much, forever, I guess. Other clients recall the accounts relatively quickly, if you don't find an asset and don't collect on it.

Q. What is relatively quickly?

A. A year.

Q. So, for Mr. Callender's account, there were a few attempts to collect on the Judgment. There was information subpoenaed to Banco Popular, in addition to the wage garnishment. Is there like a typical range of garnishments, income executions that are done?

A. Just if we find -- you know, if we have a reason to believe he has an account or job located, we don't do things like sell real property out from under the person. We don't send a marshal down to their house to seize their personal property. We don't seize automobiles. So, it's relatively limited in terms of the enforcement devices that we use. Basically, income executions and restraining notices with property executions. If there's joint accounts, you might have to do a turnover proceeding and liens on real property. If we believe the person owns real property, we file a lien.

Q. The restraint on the bank is a freeze on the bank account?

A. A freeze on the bank account, yes.

Q. So, for him, it happened about two or three maybe times. Is that about average, normal? Three, four, five?

A. I'm sorry. I didn't catch the first part.

Q. About how many times is it normal -- you have accounts that are usually there between one year and forever. To use your words, "forever." About how many income executions or bank restraints, typically, on average would they issue?

MS. LASTORINO: Objection to form.

A. There's no -- every account is different, obviously. When you say an average -- I mean, usually, you're lucky on an account if you find one bank account, you know, that has money in it because now, with the

Exempt Income Protection Act, many accounts, the banks don't hold the money because the people have less than the exempt amount. So, there's a lot less bank account restraints these days than there were in the past. So, and most people don't maintain more than one bank account, you know. I would say the average consumer does not maintain multiple accounts. Once and awhile, you'll find -- you might find two bank accounts restrained, you know, find assets that you restrain in maybe two bank accounts.

Same thing. Obviously, employment is one at a time. So, if you find a job, you issue the income execution but it's not like you'll see six income executions on file. You might see two, you know, if he left a job and then he found a job subsequently. So, you might see two income executions, probably at most, on any file, over however many years you're talking about. Same thing with the banks.

Q. Well, the bank account, I would think it would be harder to find the right bank. I would imagine you would have to do several bank accounts until you found one.

MS. LASTORINO: Objection to form.

A. Obviously, it's harder to bind a bank -- well, it's hard to find either, truthfully, you know; and again, with the Exempt Income Protection Act, whereas in the past, you would be able to restrain more money. You can't do that anymore.

Q. I'm just trying to wonder the number of times you tried to restrain because -- I'm just wondering about how many times you have to go before you make a hit, to use the --

MS. LASTORINO: Objection to form. Are you talking about on Callender's matter? What are you talking about?

Q. Do you understand the question?

A. Yes. I mean there's only a limited number of banks and you focus in on the banks that are most likely to have money in them. So, proximity to his location, work because most people bank at work. So, you hit those banks; and if you don't hit them -- we don't do more than one restraint per bank.

Q. All right.

A. So, basically, if I serve a restraining notice on say Citibank or Banco Popular, in this case, then I would never serve

one again on Banco Popular.
Q. Because, you know, there's no month there?
A. And because under the -- we interpret the restraining notice section to limit you to one time.
Q. So, one of the documents -- and we can go through them if you want -- it said something about bank -- do you use a service? It was like a bank -- what do you call it? Is there a service that you use that -- bank finder?
A. Bank finders.
Q. What is that?
A. That's a program that is in-house. It's a service, I think, that's sold -- you buy this program and you incorporate it into and it basically gives you the location of the banks and you can geographically say, if he lives here, you know, how many banks in this area and then you can serve restraining notices on those banks.
Q. The main criteria, then?
A. I think geographic location is the main criteria. Yes, it's one of the main

criteria, um-hum.
Q. Now, for the 3500 new judgment accounts you get every year, how many attorneys generally sign those? Is there a range of attorneys? One or two attorneys or --
MS. LASTORINO: Objection to form.
A. Sign what? You said "sign" what?
Q. That's a good question. The income -- the wage execution -- wage garnishments or the income executions. That's the same thing. Let me restart that question.
So -- wait. Let me just ask you, Exhibit No. 1, the income execution, it has a form with two attorneys' names underneath. Ronald Ferraro and Olivia DeBellis and then, it's apparently signed by Ronald Ferraro. For that time period, were those the two attorneys that were signing the income executions, the bank restraints?
A. Income executions based on this form, yes.
Q. So, for that period of time, those two attorneys would be the ones who signed the income executions for the judgment accounts?
A. Yes, um-hum.

Q. Are there different attorneys who signed for the information subpoenas or it would be the same attorneys?
A. Yes, I believe so.
Q. Yes, which one?
A. Yes.
Q. Yes, they're the same or --
A. No, no. They're different attorneys. They're different attorneys.
Q. Are there one or two attorneys that do that or do you know?
A. I believe Mr. Garbus signs off on some of the restraining notices.
Q. So, for the time period at issue here, 2015, I think, it would be Mr. Garbus that would sign most of the bank restraints and it would be Mr. Ferraro or Miss Olivia --
A. DeBellis.
Q. DeBellis that would sign the wage restraints. Is that right?
A. Yes. There might be other attorneys who might also sign the restraining notices from time to time but, you know, usually, we -- in this case, there were two names. It doesn't mean other attorneys couldn't

sign it. I've signed restraining notices, income executions, if necessary.

Q. But generally speaking?

A. Right, and, you know, in this case Olivia DeBellis didn't sign the income execution. It was Ronald Ferraro who signed the income execution.

Q. I'm just trying to find out, generally speaking, in 2015, would it be, Mr. Garbus would be the main person signing the income bank restraints and Mr. Ferraro and Miss DeBellis would be signing the executions?

A. I would say, based on the review of this document, yes, um-hum.

Q. And would that be the same number of attorneys that would be signing income executions and bank restraints for the last few years?

MS. LASTORINO: Please, note my objection in connection with seeking discovery on other matters, over a period of years that Judge Hellerstein also ruled is beyond the scope of discovery.

Q. Go ahead.

A. I would say yes, you know. There

were always some attorneys who signed whether -- in this period of time, it appears to be Mr. Ferraro and Miss DeBellis.

Q. But it would be about the same number of attorneys?

A. Yes, um-hum.

MR. KESHAVARZ: Can I take a quick break?

(Whereupon there is a brief recess.)

BY MR. KESHAVARZ:

Q. So, you talked about the new policy at Forster & Garbus for new accounts that are placed with Forster & Garbus after November 2014, that you would check to see if the Judgment creditor forwarded you a copy of the Judgment. Right?

A. Yes.

Q. And you would also check on eCourts to see if there's an Order to Show Cause filed. Correct?

A. Yes.

Q. Why don't you do that for existing judgment accounts that you have that were placed prior to November of 2014, such as Mr.

Callender's?
MS. LASTORINO: Objection to form.
A. Again, I think I've answered that in my prior testimony. You can go back and refer to my answers on the other questions. You've asked the same question now a few times.
Q. I apologize. If I'm asking that again, I apologize, but what was the answer or what is the answer?
MS. LASTORINO: Objection, as it has been asked and answered.
You can answer.
THE WITNESS: Can I answer?
MS. LASTORINO: For the tenth time.
A. Basically, there's no reason to doubt the validity of the Judgment based on the prior proceedings in the particular matters that would require us, under any theory, I believe, to go and check eCourts, for example, as you've stated.
Q. Then, why change the policy?
A. Again, for better practice and, you know -- I mean there's nothing wrong with always trying to improve yourself and to the

improvement of the firm. We always try to do the best we can and to follow the law and if the law changes, to make changes.

Q. Is one concerned that there are too many old judgment accounts that you're collecting on in order to check eCourts on?

MS. LASTORINO: Objection to form.

A. No. I don't know if that's the reason. Again, I think I've answered the question.

Q. Okay. Thank you.

So, as to Mr. Callender, the executing on the vacated Judgment, does Forster & Garbus feel like it did anything wrong in issuing the income execution as Exhibit 1?

MS. LASTORINO: Objection to form.

A. No, I don't believe it feels it did anything wrong when issuing the execution, based upon the knowledge that it had. For example, in 2013, I believe it was -- 2012, I believe it was, December, when Mr. Callender made his complaint to the Department of Consumer Affairs, we sent -- we stopped the collection proceedings at that time, you know, no further asset locating, no further collection, seized all communication with Mr. Callender until we went back to the client with the DCA complaint. We forwarded the DCA complaint to them for their investigation and subsequently, they reported back to us that the dealt was valid and that we can proceed with collections. There was no reason to doubt, again, that there was anything wrong with the Judgment at that time. The client verified that the debt was due and owing and we proceeded on, you know, subsequently, you know, months afterwards, after the client had given us that information to, again. Seek to recover and collect on the debt.

Q. So, the answer is no, Forster & Garbus doesn't believe it did anything wrong in issuing the income execution against Mr. Callender, that's Exhibit 1. Is that right?

A. At the time we issued the income execution, we believed we had the right to issue the income execution. That's correct.

Q. And if Forster & Garbus had to do it over again, would it do anything differently or do you feel you've followed the proper procedure at that time?

MS. LASTORINO: I object to form.

A. I won't answer as to whether or not we followed the proper procedure. I would say that, obviously, if we knew the Judgment had been vacated, we would not have issued the income execution. In fact, our system wouldn't allow us to produce the income execution because had known the Judgment was vacated, we would have removed the Judgment information from the system and not been able to do any kind of post-judgment enforcement.

Q. When you got the dispute from Mr. Callender about fraud, why didn't you look at the court file?

A. Because there was no reason to look at the court file. Mr. Callender was not alleging any issue with a Judgment or that he wasn't -- he was alleging fraud. He was saying, "I never had a Discover account." So, if he never had a Discover account -- we went back to Discover and Discover said, "Yes, he did have a Discover account.

Q. But Discover asked you to take a look at the court file. Right?

MS. LASTORINO: Objection.

A. I'm sorry. What?

Q. Didn't Discover ask you to take a look at the court file?

MS. LASTORINO: Object to form.

A. How would I know what Discover did?

Q. Well, it's in the collection notes but if Discover asked you to take a look at the court file, do you believe Forster & Garbus should have done that?

MS. LASTORINO: Objection to form.

A. I have no idea what you're talking about that Discover told us to do.

Q. If Discover told Forster & Garbus, when Forster & Garbus sent the dispute letter from Mr. Callender, Forster & Garbus -- if Discover told Forster & Garbus to go ahead and pull the court file, if they did that -- if they said that, is that a responsibility for Forster & Garbus to do?

MS. LASTORINO: Objection to form. He already said he doesn't know. If you want to show him a document, show him a document.

MR. KESHAVARZ: I'm just -- please, mark that as an exhibit.

(Whereupon the document is marked as P-6 for identification.)

Q. Please, review Exhibit P-6 and let us know when you're done.

(Whereupon the witness reviews the document.)

A. I'm done.

Q. Are those Forster & Garbus's collection notes regarding the judgment account it was collecting on Mr. Callender?

A. Yes.

Q. There's 75 pages of documents that I received last week. Let me ask you, if you turn your attention to page 113. If you read 112 or 113, just read those to yourself and let me know when you're done, please.

(Whereupon the witness reviews the document.)

Q. Are you done? I'm sorry. Take your time.

A. Yeah, I'm done.

Q. So, looking at page 113, was Discover, in fact, asking Forster & Garbus to send it any answer filed, any internal notes and the Judgment, if applicable, and all other

documents pertaining to the account?
MS. LASTORINO: Objection to form.
Q. Discover asked Forster & Garbus to do that. Correct?
MS. LASTORINO: Objection to form.
A. The notes speak for themselves.
Q. And you believe that to be true?
A. If that's what it says.
Q. And you believe those notes to be accurate in that regard?
A. In terms of what they requested, it says. It says, "copies of any answers --" it says what it says. "All internal notes, Judgment."
Q. So, why didn't Forster -- strike that.
If Discover was asking Forster & Garbus to go and get a copy of the answer that was in the Court file, a copy of the Judgment and other documents, why didn't Forster & Garbus do that?
MS. LASTORINO: Objection to form.
A. I think it's because usually -- this is, more or less, I believe a form type of response from the client. Now, generally, if an

Answer was filed, we'd have a copy in our office. Now, we provide them with what we have scanned to the computer, the Summons, the Complaint, the Answer, the Judgment, if we obtained it. In this case, this was referred already as a judgment file and he was not -- Mr. Callender was alleging fraud or false identity. Okay. I think on Forster & Garbus's part, that we provided them with information and they investigated it from a fraud aspect. So, they looked at the application. They looked at the signatures. They looked at the addresses. They looked at the billing statements and responded accordingly.

Q. So, if a consumer were sued and they claimed that the account was fraudulent, that would be an affirmative defense they usually raise in their Answer. Right? "This is not my account. This is fraudulent." Right?

MS. LASTORINO: Object to the form.

A. I guess.

Q. So, if Mr. Callender was claiming fraud and Discover said Forster & Garbus, please, look at the Judgment, if there is one,

and look at the Answer. One reason to look at the Answer would be to see if Mr. Callender filed an Answer that alleged fraud. Right?
MS. LASTORINO: Objection to form.
A. I can only speculate.
Q. I mean that's what Discover wanted Forster & Garbus to do. Right?
A. I don't really know. I'm not Discover. So, I really don't know what they wanted, you know. As I said, any time there's a false dispute or false identity dispute, they will say "send us your documents." That's what we do. We send the documents that we have in our file. There was nothing to indicate, in this particular complaint, that there was anything wrong with the Judgment. He was claiming that, you know, it wasn't him; that he never had a Discover card.
Q. Well, let me ask you this because you're the corporate representative of Forster & Garbus. You're all Forster & Garbus encapsulated into one person for purposes of this case and this trial. So, I'm just trying to nail down Forster & Garbus's position as to this issue.

So, it's Forster & Garbus's position now that if Discover says it wants Forster & Garbus to look at the Answer, including any allegations of fraud in the Answer and the Judgment, is it Forster & Garbus's position that it should have done that or it should not have done that?

MS. LASTORINO: Objection to form. You're characterizing it in the way you want to characterize it.

MR. KESHAVARZ: Objection to the form. That's fine. You can object to the form.

You can answer the question.

A. There was no Answer in this file. So, there was nothing to look at in terms of an Answer. There was a Judgment since 2005. The Judgment is res judicata on the issue of liability and the responsibility to pay the Judgment. So, there was no answer, okay. There wouldn't -- you know, had there been an Answer, it wouldn't have been a Default Judgment and so, there was no Answer to respond to the Complaint. There was no Answer.

Q. But when you were executing on the

Judgment and during this fraud dispute, you never looked on eCourts to see if there was an Answer filed. Right?

MS. LASTORINO: Objection to form.

A. Correct.

Q. And you never sent someone to the courthouse to see if an Answer was ever filed. Correct?

A. Correct.

Q. Because if an Answer was filed in the consumer-alleged fraud, that's something you would believe Discover would want to know. Right?

MS. LASTORINO: Objection to form.

A. Again, there was no indication, based on the fact that there was a Judgment, that that was an Answer on file.

Q. Well, how do you do that? I mean people have judgments against them after filing an Answer by losing in court. Right? Is that true?

A. I guess.

Q. So, when Forster & Garbus continued to execute, continued to collect on the Judgment, it didn't know whether Mr.

Callender had filed an Answer or not. Right?
MS. LASTORINO: Objection to form.
A. I guess that would be correct.
Q. And so, they didn't know he filed an Answer and the Answer said "This is indeed fraud." Forster & Garbus didn't know that when it executed on his wages. Right?
A. Just give me a second.
Q. Take your time.
(Whereupon the witness reviews documents.)
A. I don't think I can answer that question at this time, without further review of certain documents, to answer that effectively.
MR. KESHAVARZ: Can you read what my last question was?
(Whereupon the last question is read back by the reporter.)
Q. Let me ask you, sir, when Discover asked you to check for the Answer in the court file to see if there was even a Judgment, why didn't Forster -- strike that.
Forster & Garbus should have, in fact, done that. Right?
MS. LASTORINO: Objection to form

and your characterization of what Discover said.

MR. KESHAVARZ: Preserved as an objection.

Go ahead.

A. Again, I also -- you know, you're putting certain language in there, which I don't agree to. You gave me a date of the summons before and I don't remember what that date was. Could you provide me with the date of that Summons and Judgment?

Q. The summons on the collection lawsuit?

A. Yes.

Q. And the date of the Judgment?

A. That is correct.

Q. Well, let me -- that's a good point. So, when Forster & Garbus collects on judgment accounts such as Mr. Callender, it doesn't get it, certainly before November 2014, it doesn't get a copy of the Judgment?

A. Well, it did in many cases, as I testified before.

Q. In some cases it did?

A. Oh, yes, it did, in many cases,

well before 2014.
Q. Forster & Garbus didn't require the Judgment creditor to produce a copy of the Judgment that it wanted Forster & Garbus to execute upon. Right?
A. There was certain cases where we did not have copies of the judgments and we would still continue with collection efforts.
Q. Because you didn't requirement the copy of the Judgment prior to executing. Right?
MS. LASTORINO: Objection to form.
A. I guess.
Q. Okay. So, as the collection law firm, on behalf of the judgment creditor like Discover, you provide your best legal advice and opinion to Judgment creditors like Discover. Correct?
MS. LASTORINO: Objection to form.
A. We provide them with information, sure.
Q. And you provide an independent legal analysis and termination as to the collection of the putative judgments that they want to you collect. Right?
MS. LASTORINO: Objection to form.

A. Yes, to a certain extent, you know, if there was -- certainly, as attorneys, we have to act as attorneys and we have a, you know --

Q. You have a duty?

A. Duty of responsibility, sure.

Q. And that duty is to find out whether the facts and circumstances would warrant the execution on alleged judgments, as Mr. Callender. Right?

MS. LASTORINO: Objection to form.

Q. That's what your obligations?

A. And that obligation can be filled in many ways, as I previously testified.

Q. But let me ask you this: Just looking at exhibit --

A. P-6? Is that what it is?

Q. Yes, Exhibit 6, page FG113. That is dated -- those communications are dated December 28, 2012. Correct?

A. Yes, um-hum.

Q. So, given what -- strike that.

And the information under the memo section, those are -- that's what Discover is telling Forster & Garbus. Correct?

A. Yes.
Q. So, when it says on page FG113, for December 28, 2012, "Also, please, include copies of any Answer filed, all internal notes and Judgment, if applicable, and all other documents," should Forster & Garbus have checked the Court file at that point?
MS. LASTORINO: Objection to form.
A. I guess that's the question to ask the Judge and the jury.
Q. And as the attorney for Forster & Garbus, is it Forster & Garbus's position that Forster & Garbus should have checked the Court file on December 28, 2012, when Discover asked Forster & Garbus to "please, include copies of any Answer filed, all internal notes, judgments, if applicable, and all other documents"?
A. I believe, again, as I said before, this is a Discover request, which is -- you know, everything is through a computer. Everything is coded. So, there's a coded message. That doesn't necessarily mean that in every case you have to respond to everything that is in this file. So, in this case, this is a Judgment that at that point, was almost 10

years old and that Discover placed with us as a judgment file. As far as I know, and this is why I asked you for the dates before, there was no Answer filed in the original action; that this was a Default Judgment that was sent to us. So, and the Complaint did not allege anything about the Judgment or state that he filed an Answer. He said he doesn't have a Discover card and so, the investigation centered on whether or not he had a Discover card and in this particular case, we relied on the information that Discover came back to us and said "Yes, in fact, he did have a Discover card. This is his card." I don't think there's been, you know -- withdraw that.

Based on that, we went forward.

MR. KESHAVARZ: Objection to the nonresponsive part of that answer.

MS. LASTORINO: And I object to his characterization of it being nonresponsive.

Q. You said "Default Judgment." Forster & Garbus had no idea if the Judgment was entered by default or not. Right?

MS. LASTORINO: Objection to form.

A. And I requested that I had to see other documents.

Q. Well, my question was on December 28, 2012, is it Forster & Garbus's position that it should have checked the Court file; and on December -- on that date, December 2012, Forster & Garbus didn't know if it was a Default Judgment or not. Correct?

A. No. I said I need more information. I need to look at other documents.

Q. If you look at -- I'm worry. Were you done?

A. I'm done.

Q. Okay. If you look at Exhibit 6, page FG77?

A. I'm sorry. FG77?

Q. Yes.

A. Right, um-hum.

Q. It says that there's been a Judgment entered. Correct?

A. Yes.

Q. Right?

A. Yes, it does say that.

Q. There's no indication whether the Judgment against Mr. Callender was a Default

Judgment. Correct?
A. Not at that place, no.
Q. At what?
A. Not on that place in the notes, um-hum.
Q. All right. The evidence that Forster & Garbus had in its possession, custody and control, in December 2012, Forster & Garbus did not know whether Judgment was entered by default or not. Correct?
MS. LASTORINO: Objection to form.
A. And again, as I have stated now, on two or three previous occasions, there are other documents that I could look at and then I can perhaps answer that question as to whether or not it was a default.
Q. What other documents would you look at?
A. We've produced -- I'd have to look at the -- and I think we -- I'd have to look at the -- what is it? The F-9 notes that you provided?
MS. LASTORINO: Um-hum.
A. The F-9 notes and there's another screen I could look at and based on that --

well, you gave me the dates. So, if you give me the dates, I can respond. Tell me the date the Summons was served and the date the Judgment was entered and I can explain my answer.
Q. Well, I'm just going on what Forster & Garbus knew on December 2012?
A. Well, you don't know what I knew until you give me that information because I have other screens and if you give me those dates, which I can look up or if you can just give them to me, I will give you an explanation. How does that sound?
Q. Would that be a date that would be listed on the document production?
A. You said it before. You opened up earlier this morning and you said, "the Summons was served" such and such date and "the Judgment was entered on" such and such a date. You provided that information this morning. I didn't write it down and I don't remember, but you had the information. You gave it to me.
Q. I think you're talking about the date the Francis complaint was filed for Forster & Garbus's executing on the vacated Judgment.
A. No. I thought you mentioned it in

this case.

Q. But, in any event --

MS. LASTORINO: Let him finish.

A. All right. So, this is where --

MS. LASTORINO: I don't think there's a question pending.

Q. Go ahead.

A. No. In other words, by the date of the Summons versus the date of the Judgment, I can tell whether it was a Default Judgment.

Q. All right. On December 2012, Discover asked Forster & Garbus to determine if there was even a Judgment. Right?

MS. LASTORINO: Objection to form.

A. You're speculating as to what that wording means.

Q. What does it mean to you?

A. For example, as I said, this was a form -- every time there was a dispute, they request this information. So, if there was a placement by Discover Bank where Forster & Garbus had obtained the Judgment, then Discover may not have had a copy and would want us to produce a copy. They generally want us to produce what we have in our file; and when I say "our file," the documents that was scanned to our file and that have been provided to you in discovery. So, if they wanted another copy of the Judgment, we would provide them with another copy of the Judgment at that point. This was a placement where the client had already referred it to us as a judgment account.

Q. But they never provided you with a Judgment?

A. No. Doesn't mean they didn't have it. Just means they didn't provide it to us.

Q. When they said they want you to include a copy of a Judgment, if applicable, it's Forster & Garbus's position that that does not mean Discover wanted you to get a copy of the Judgment. Is that --

MS. LASTORINO: Again, objection to form.

Q. Is that Forster & Garbus's position?

A. I wouldn't say "position." It's what is and didn't happen. Did we provide a copy of the Judgment? No. That's the answer. I'm not going to say "position," "not position," "position," "not position." Ask a question.

"Did we provide a copy of the Judgment?" The answer is we didn't provide a copy of the Judgment at that time.

Q. Is it Forster & Garbus's position that if Mr. Callender had filed an Answer, even alleging fraud, that as long as there was a Judgment, it was immaterial to Forster & Garbus as to whether it could execute on the Judgment, that the Answer contained fraud allegation?

MS. LASTORINO: Objection to form and almost incomprehensible, that question.

A. Well, again, I don't think there was, you know, any kind of thought process along that basis but, hypothetically, if an Answer was filed and it alleged fraud and if a Judgment was entered, then that fraud claim was denied because the affirmative defense would have been dismissed or a Judgment would not have been allowed; and, therefore, his subsequent fraud claim would have been resolved in the court, but we still probably would have referred it as a dispute to the client, in any event, because he's now realleging that, you know, and -- but in any event, if there was a Judgment entered after a fraud in an Answer -- a judgment is a judgment is a judgment. When I lecture and I give examples. I say whether it's a judgment based on default, whether it's a judgment based on the merits or whether it's a judgment based on the stipulations, it's a judgment and can be enforced under Article 52 if the CPLR.

Q. So, it's Forster & Garbus's position that even if there was fraud and a fraud allegation it had no problem executing on that Judgment. Right?

MS. LASTORINO: Objection to form. You're recharacterizing testimony. He answered the question.

A. I answered the question I think relatively well.

MS. LASTORINO: Don't try to change his testimony.

MR. KESHAVARZ: I'm asking him a question --

MS. LASTORINO: You're recharacterizing his testimony.

MR. KESHAVARZ: -- and asking if he agrees with it.

A. If there was a judgment, whether

there was a fraud allegation, whether there was a statute of limitations allegation, whether or not there was -- you know, denials are put in answers all the time. Affirmative defenses are put in answers all the time and after the Court ruling, whether by Summary Judgment or trial or arbitration or whatever, if there's a Judgment, there's a Judgment and it doesn't matter at that point. It's res judicata on the issue of his liability and there's nothing to indicate that Mr. Callender did, in fact, file an Answer in the original Complaint.

Q. Yeah but you didn't -- there's no -- but Forster & Garbus never checked. Right?

A. Right, but again --

Q. Just tell me if it's Forster & Garbus's position whether this a true statement. By "attorney," I going to mean Forster & Garbus.

Does Forster & Garbus warrant to Discover that it will exercise reasonable care and best efforts to attempt to collect a judgment account, as to Mr. Callender?

MS. LASTORINO: Objection to form as to whether something is a true statement. Why don't you ask him a question.

MR. KESHAVARZ: That was the question.

MS. LASTORINO: It wasn't a proper question.

A. Yeah. Would you repeat that? That was a little confusing to me.

Q. That's fine.

A. Because you put it in such a way, is it our position that -- so, you know, let's --

MS. LASTORINO: Let him ask the question again.

A. Ask the question again, please.

MS. LASTORINO: Are you going to give him the benefit of what you're reading from? Do you want to show him something?

(Whereupon there is an off-the-record discussion.)

MS. LASTORINO: Okay. Then explain that to him.

He wants to clarify something on one of your earlier questions.

Q. Go ahead.
A. Remember when I asked you for the dates. I knew there were dates.
MS. LASTORINO: He just needed his recollection refreshed.
A. So now, in looking at P-2, okay, the eCourts information, which shows that the date of the filing of the Summons and Complaint was July 27, 2005 and it shows the disposition date of 12/21/2005, which I believe is the date of the Judgment. It would be impossible in the Civil Court of the City of New York, County of New York, to obtain a Judgment on the merits in that period of time. It had to have been a Default Judgment. There's no way that this court could enter a Judgment in that short period.
Q. So, are you saying that when Discover told Forster & Garbus, in December of 2012, to get a copy of the Answer, that Forster & Garbus should have looked on eCourts? Is that what you're saying?
A. No, I'm not saying that. I'm just saying that this appears to be a Default Judgment.

Q. Because now you're looking on eCourts. Right?
A. Yes.
Q. But if you were looking on eCourts this whole time, then you would have never been executing on this vacated Judgment. Right?
MS. LASTORINO: Objection to form.
A. And again, we have --
Q. Is that right?
A. If we had checked eCourts but I testified before as to that.
MR. KESHAVARZ: If you can mark this, please.
(Whereupon P-7, sections of the Discover Retainer Agreement, is marked for identification.)
Q. I'm showing you what's been marked as Plaintiff's Exhibit 7. It's sections of the Discover Retainer Agreement with Forster & Garbus. Discover produced the sections of the Retainer Agreement. It stated, I believe, the obligations of Forster & Garbus in collecting on Discover accounts. So, I want you to review it but I'm going to ask you a question on page Callender 220, top paragraph. For the record,

Plaintiff's Exhibit 7 are pages 216 Callender to Callender 220. So, if you could review the document, then I'm going to point to the top paragraph that starts on page 220.
A. Page what? 220?
Q. Yes, Bates Stamp 220, top paragraph. If you can read that paragraph in particular and let me know when you're done.
A. Starting with --
Q. The top paragraph on page Callender 220.
A. "Laws, License and Requirements"?
Q. Correct.
A. "And any other --" you want me to read this whole thing?
Q. Well, just read it to yourself.
A. Oh, read it to myself, yes.
(Whereupon the witness reads the document.)
A. Okay. I've read it.
MS. LASTORINO: Which paragraph?
THE WITNESS: This part.
MS. LASTORINO: Okay.
Q. So, it states -- tell me if I'm reading this correctly. "Attorney further

warrants that it shall exercise reasonable care and best efforts in attempting to collect accounts." Did I read that correctly?

MS. LASTORINO: The document speaks for itself.

Q. Did I read it correctly?

A. Yes.

Q. And does Forster & Garbus in fact use, exercise reasonable care and best efforts in attempting to collect Discover accounts?

A. Absolutely.

Q. And it goes that -- goes on to say that Forster & Garbus shall not engage in any collection or judicial enforcement action which may be deemed unfair, abusive, deceptive or harassing. Is that correct?

A. That's what it says.

Q. And Forster & Garbus in fact -- well, let me ask you this: Do you believe executing on my client's wages, when there was no Judgment, in Forster & Garbus's opinion, does it believe that that's unfair, abusive, deceptive or harassing?

MS. LASTORINO: Objection to form.

A. At the time we issued the income

execution, I believe we were not unfair, not abusive, not deceptive or not harassing, okay, and that we were complying with the directives of Discover Bank.

Q. Do you think it was unfair to Mr. Callender to execute on a vacated Judgment, regardless of your knowledge?

MS. LASTORINO: Objection to form. Regardless of his knowledge?

Q. For Mr. Callender, what you know is not the issue. So, when it says here that you shall not engage in unfair conduct, do you think executing on a vacated Judgment to Mr. Callender is unfair or do you not believe that's unfair?

MS. LASTORINO: Objection to form.

A. I would imagine from Mr. Callender's point of view, it would be --

MS. LASTORINO: Don't speculate as to the opine on someone else's subjective belief. What kind of proper question is that?

MR. KESHAVARZ: Don't instruct your witness.

MS. LASTORINO: Your client could

testify as to that.
MR. KESHAVARZ: Object to form.
He answered the question, so it's fine.
MS. LASTORINO: He said --
MR. KESHAVARZ: No. Thank you.
Q. Going on to the next sentence.
"DBSC." That's basically Discover. Right?
A. Basically, yes.
Q. So, "Attorney acknowledges that
Discover is relying upon the experience of the
attorney, Forster & Garbus, in regard to the
matters assigned to it." Does Forster & Garbus,
in fact, acknowledge that?
A. By signing the retainer?
Q. Is it Forster & Garbus's position
today that Discover is relying upon the
expertise of Forster & Garbus in the collecting
of accounts such as the vacated Judgment?
MS. LASTORINO: Objection to form
and again, you're asking to opine as to
what another entity is relying on.
MR. KESHAVARZ: Don't instruct
your witness.
MS. LASTORINO: I'm not.
MR. KESHAVARZ: Either object to

form or not and that's all you're admitted to do.

MS. LASTORINO: That's the basis of the objection.

MR. KESHAVARZ: That's all you can say.

You may answer.

A. And basically, again, you know, it says what it says in there and if we signed off on this retainer, then the language speaks for itself.

Q. So, it's Forster & Garbus's position that Discover is relying on your representations, for example, on whether the Judgment is vacated or not?

A. Whether they actually are or not, I don't know, in this particular case.

Q. But they're supposed to?

MS. LASTORINO: Objection to form.

A. Well, I don't know what their internal practices are.

Q. Okay. And it goes on to say that "Discover expects of attorney, Forster & Garbus, to proactively utilize its expertise with regard to matters in this paragraph, whether specifically directed by Discover or not." Is that correct?

A. Where are you reading that? I don't see that.

Q. The last sentence.

MS. LASTORINO: Last sentence where?

MR. KESHAVARZ: First paragraph, page 220. I'm substituting the word -- when it says, "attorney," it means Forster & Garbus. Right? And DBSC is Discover. So, I'm just swapping those --

A. So, you're saying "DBSC expects attorney to proactively utilize its expertise"? Is that the sentence you're referring to?

Q. Yes.

A. Okay.

Q. So, for Mr. Callender and all judgment accounts and all accounts from Discover, Forster & Garbus is supposed to proactively utilize its expertise regarding the collection of that account. Right?

MS. LASTORINO: Objection to form.

A. And again, I'll just go by the wording. It says what it says.

Q. And that's your responsibility. Right? Forster & Garbus's responsibility?
MS. LASTORINO: Objection to form.
A. It says what it says.
Q. The answer is yes? Is the answer yes?
A. Okay.
Q. Is the answer yes?
A. Yes, I guess the answer is yes, pursuant to the retainer.
Q. Okay. And it's required -- Forster & Garbus is required to do that regardless if Discover specifically says that or not. Right?
A. That's what it says.
Q. So, is it Forster & Garbus's position that despite its contractual requirement to utilize its expertise proactively, that it still was not under any obligation to check eCourts to see whether the ten-year-old Judgment against Mr. Callender was vacated?
MS. LASTORINO: Objection to form.
A. Absolutely.
Q. Absolutely?

A. Absolutely.
MR. KESHAVARZ: Can you read the first part of the question?
(Whereupon the referenced question is read back by the reporter.)
Q. And by "absolutely," you mean absolutely not required to check eCourts. Correct?
A. Absolutely.
Q. Absolutely not required to check eCourts. Right?
A. Absolutely -- yes.
Q. Thank you. So, we have -- the Complaint makes a request for punitive damages. One of the pattern jury charge questions on punitive damages is the income assets, relative financial positions of the parties.
MS. LASTORINO: Is this a question?
MR. KESHAVARZ: Can I finish?
MS. LASTORINO: Go ahead.
Q. So, let me ask you, what is the income of Forster & Garbus, if you know?
MS. LASTORINO: Objection.
And you don't have to answer that.

Q. Do you know what the answer to the question is?

MS. LASTORINO: You're asking if he knows the answer? Because I'm not --

Q. Do you know the answer?

MS. LASTORINO: Objection. The objection is, it so far exceeds the scope of discovery in this case. Just mark it for a ruling.

MR. KESHAVARZ: Except that it's part of the pattern jury charge.

MS. LASTORINO: I don't care what you're saying the pattern jury charge says. It exceeds discovery and he's not going to answer that. This is not a class action.

MR. KESHAVARZ: I know but the punitive damage question allows and requires a jury to consider the relative financial positions of the parties, the income and the assets.

MS. LASTORINO: I'm directing him not to answer based on, really, like Judge Hellerstein said, "seeking to swat a fly with a howitzer." I'm not going to allow him to answer that. It is not relevant to this case. It far exceeds discovery. This is not an class action where net worth of the law firm is a factor.

MR. KESHAVARZ: Well, let me take it one at a time.

Q. First of all, do you know?

MS. LASTORINO: It's irrelevant if he knows or not because I'm telling him that he's not answering. If you want to make a motion, let's make a motion. Let's get the Court on the phone right now.

MR. KESHAVARZ: Are you instructing him not to answer whether he knows what Forster & Garbus's income is? Are you instructing him not to answer whether he knows?

MS. LASTORINO: You could answer if you know or if you don't know.

And then, he's not answering what it is. So, what difference does it make?

Q. One step at a time. Do you know what the Forster & Garbus -- the law firm. It's

an LLP?
A. It's an LLP, yes.
MS. LASTORINO: Actually, you know what? I am directing him not to answer. It's not relevant.
MR. KESHAVARZ: Whether he knows?
MS. LASTORINO: Right. It's not relevant. This is not a class action. This far exceeds the scope of discovery, Ahmad. You know that. The income the law firm? No.
MR. KESHAVARZ: Are you disputing that the income and worth is not a factor for punitive damage question?
MS. LASTORINO: You're assuming, first of all, that there's punitive damages and punitive damages are not dependent on the net worth of the firm. I'm going to object to that.
MR. KESHAVARZ: Are you disputing that's one of the factors for the jury to consider?
MS. LASTORINO: I'm not going to agrees as to what you're reading from. It's also a legal question. I mean

you're asking him to give you an answer on something that you're saying is a pattern jury instruction. It's inappropriate. It exceeds the scope of discovery.

MR. KESHAVARZ: You're not going to let him testify as to even whether he knows the net worth, the income, the assets of Forster & Garbus are? Is that what you're saying?

MS. LASTORINO: I will let him answer if he knows or doesn't know and that's it. I'm not allowing him to answer anything after that. If he even knows. Maybe he doesn't.

MR. KESHAVARZ: Maybe we'll find out.

Q. Do you know what the income of Forster & Garbus is?

A. No.

Q. Do you have any idea what the income is? No idea --

MS. LASTORINO: He answered no. How many times are you going to ask that question? I let you ask that question if he knew or he didn't know. He said, "no." That's the answer.

Q. Do you have any idea what it is for the last year?

MS. LASTORINO: Objection.

A. No.

Q. Do you have any idea what it is this year?

MS. LASTORINO: Objection.

A. Certainly not.

Q. Any of the prior years?

MS. LASTORINO: Objection.

A. Again, I don't know the income.

MS. LASTORINO: It's yes or no. You answered it five times.

A. I'm not a partner of the firm.

Q. Do you know what the face value of the accounts that Forster & Garbus attempts to collect are?

MS. LASTORINO: Objection.

Q. You can answer.

A. No.

Q. Do you know what the face value of the judgment accounts at Forster & Garbus --

MS. LASTORINO: I'm going to

object to this. Let's get the Judge on the phone.

MR. KESHAVARZ: About whether he even knows the face value of these accounts?

MS. LASTORINO: What else are you going to go -- he's saying that he doesn't know. Are you going to go through every single --

MR. KESHAVARZ: Well, let me finish. Let me finish asking the question. Let him answer. If you stop interrupting, we'll get through this much faster.

MS. LASTORINO: Well, start asking appropriate questions.

Q. All right. You don't know the face value of all the portfolios that Forster & Garbus attempts to collect on. Is that right?

A. That's correct.

Q. Do you know what the face value approximately is for the portfolios of judgment accounts that Forster & Garbus attempts to collect on?

MS. LASTORINO: Objection.

A. No, I do not.
Q. Do you know what the average or range of average face value of the judgment accounts that Forster & Garbus collects is?
MS. LASTORINO: Objection.
A. I don't even understand that question.
Q. Well, that's a perfectly valid response because I asked you to ask me to clarify.
So, the face amount of the judgments, for the judgment accounts that Forster & Garbus collects on, do you know what the -- the total amounts of those judgments are?
MS. LASTORINO: Objection.
A. No. Asked and answered. I said that. No.
Q. Do you know what the average value of the judgments are?
MS. LASTORINO: Objection. This is really getting abusive now.
A. No, I don't.
Q. Do you know what the net worth of Forster & Garbus is?
MS. LASTORINO: Objection.

You don't have to answer. This is really -- this is really abusive. This is grounds for a motion.

MR. KESHAVARZ: I'm asking if he knows. You said, "Yes, he can answer. Yes, he can answer."

MS. LASTORINO: But you keep going. You ask some questions and then that's it. I mean you can spend the next hour asking these questions. He doesn't know. That's inappropriate, anyway, because if he knew, where is it leading towards? It's not discoverable.

A. And I don't know the answer to it.

Q. So, let me just make sure we're clear because you seem to be -- I can literally see the gears moving in your head, but putting that aside --

MS. LASTORINO: Which I don't even know what that means.

Q. Let me ask you this. Do you know what the net worth of Forster & Garbus is?

MS. LASTORINO: You just asked that question.

Q. You may answer.

A. I don't know.
MS. LASTORINO: That's it. That's it.
MR. GARBUS: Is it time to leave?
MS. LASTORINO: We're going to call the Court. I'm not going to engage in this anymore.
MR. KESHAVARZ: Well, he says he doesn't know.
MS. LASTORINO: So, then why do you keep asking him the same question a different way, if he doesn't know?
MR. KESHAVARZ: Because income is one thing and assets are another thing.
MS. LASTORINO: But he answered everything already. You keep asking him the same question.
MR. KESHAVARZ: No. I think I've asked him four different --
MS. LASTORINO: You asked the same question. I would move on.
Q. How many people work at Forster & Garbus?
A. Approximately a hundred and seventy-five.

Q. How many of those are attorneys?
A. I believe twelve.
Q. Do you know what the payroll is for Forster & Garbus?
MS. LASTORINO: Objection.
A. No.
Q. Okay. Do you know the total number of accounts Forster & Garbus collects on?
A. No.
Q. Do you know -- Forster & Garbus, the LLP, do you know who the general partner of the LLP is?
A. No.
Q. Is there a general partner?
A. I don't know.
Q. All right. Looking at Exhibit No. 1, the income execution, do you know if those signatures are physical ink pen and paper signatures or is it a digital signature, if you know?
MS. LASTORINO: Objection to classifying it as signatures, plural.
Q. You may answer the question.
A. These would be original signatures. Then, scanned into the computer, so

that you don't see the ink but these would have been the original scan.

Q. Thanks. I was looking at the collection notes and I didn't see anything about sending out the CPLR 5222 notices. Does Forster & Garbus send those out?

MS. LASTORINO: Objection to form. Was that a statement or a question?

Q. Does Forster & Garbus send those out?

MS. LASTORINO: That you didn't see it? You want him to answer if you didn't see something?

MR. KESHAVARZ: If you would stop interrupting, this would go so much faster.

MS. LASTORINO: If you ask proper questions, I wouldn't have to do this.

MR. KESHAVARZ: If you have an objection to the form of the question, you can add them.

MS. LASTORINO: I have been, Ahmad, and it's not improving with your questioning. You still ask the same improper questions: Compound, your beliefs, someone else's belief. Ask appropriate questions. It would go a lot easier.

(Whereupon there is an off-the-record discussion.)

Q. Do you know what a CPLR 5222 Notice is?

A. Are you talking about the exemption claims? Yes.

Q. And what is it?

A. Okay. Pursuant to 5222-a of the CPLR, entitled the "Exempt Income Protection Act," you're required, when serving a restraining notice, to serve two copies of the restraining notice to the bank, together with exemption claim forms and a notice to the judgment debtor, a notice regarding exemptions that are allowed by law, such as disability, Social Security, et cetera. Those forms were sent to Banco Popular in accordance with 5222. I think we provided that in discovery.

Q. Maybe I'm getting the number wrong of the CPLR because I'm more of federal court practice in there but isn't Forster & Garbus and judgment creditors generally supposed to give a

notice, once a year, to judgment debtors about the exempt assets or is that incorrect?
MS. LASTORINO: Objection to form.
A. There is a provision for, okay, that. However, the exemption notice, 5222-a provides that you provide a notice of that form and a copy of the -- you can do two things: You can either serve a copy within a year prior or you can serve a copy with the restraining notice within four days of the service of the restrainer notice. CPLR 5222-a provides that the bank serve a copy of the restraining notice and the exemption claim form upon the judgment debtor, so he does get that notice of exemptions.
Q. So even, if Forster & Garbus hadn't given notice for say four years, are you saying so long as it gives the notice along with the bank restraint, then it's complied with its obligations?
MS. LASTORINO: Objection to form.
Q. Is that what you mean?
A. Well, that could be an interpretation of what I said.
Q. And is that Forster & Garbus's

position?

MS. LASTORINO: Objection to form.

A. I'm not saying there is a position.

Q. All right.

A. This is a legal question.

Q. Well, let me ask you a factual question because I didn't note in the collection notes any indication that there was a CPLR 5222 Notice, other than for the restraints, but I didn't see one that's sent out every year or at all, other than the restraints. Does Forster & Garbus not send out these notices every year?

A. No, no. We do. There is a program in effect to do that.

Q. You have the collection notes that are Exhibit 6?

A. I see. I know, um-hum.

Q. Is there anything in there that indicates that these 5222 notices were actually sent to Mr. Callender every year?

A. It doesn't have to be sent to Mr. Callender every year unless you're going -- you know, you have a right to either send it to him in advance or within four days of the service of

the restraining notice. That's what the statute says. So, Mr. Callender wasn't served the 5222 Notice, other than with the income execution. Is that right?
MS. LASTORINO: Objection to form.
A. The income execution doesn't require 5222 notices. It's a different section. It's not a bank. There's no exempt assets for your place of business. So, it's not required for the income execution. It's 5231 that's the income execution statute. It's not in there.
Q. Well, when was the last time Forster & Garbus gave Mr. Callender a 5222 Notice?
MS. LASTORINO: Objection to form.
A. That notice -- I'm not sure. I don't know. There's nothing in the notes to reflect that.
Q. There's nothing in the notes to reflect that?
A. No.
Q. If the 5222 notices were sent to Mr. Callender, would that be reflected in the collection notes?
A. Probably.

Q. But you're saying you don't see any indication of that?
A. That is correct.
Q. Do you know why that might be?
A. Okay. Let me just see.
(Whereupon the witness looks through documents.)
MR. KESHAVARZ: While you're doing that, I'm going to take a break. Let's go off the record.
(Whereupon there is a brief recess.)
BY MR. KESHAVARZ:
Q. Okay. You were going to answer.
What was the last question?
(Whereupon the last question is read back by the reporter.)
A. No, I don't know the reason.
Q. Other than the bank restraint, when Forster & Garbus attempts to collect on judgments, is it Forster & Garbus's position that it's not required to send out a CPLR 5222 Notice, if it wasn't a bank restraint?
A. It only applies to bank restraints and property executions, a bank execution. It

does not apply to income executions.

Q. So, income executions or other attempts to collect on judgments, it's Forster & Garbus's position that it's not required to send out a CPLR 5222 Notice to the consumer, at any point?

MS. LASTORINO: Objection to form.

A. A 5222 applies to bank restraints and so that section applies to bank restraints, not to income executions. It applies to property executions, under 5232, I believe, and 5222 for bank restraints.

Q. All right. Well --

A. I was just going to say other than there were no other bank restraints on this account.

Q. So, for other attempts, other than bank restraints, income executions, collection letters, so forth, is it Forster & Garbus's position that it's not required to send out a 5222 Notice, at any point, prior to taking those other steps?

MS. LASTORINO: Objection to form.

You can answer.

A. As to income executions, et

cetera, as far as letters go, you know, we comply with Department of Financial Service rules, which are recently in effect, that provide for an exemption notice. That's the new rules under the Department of Financial Services but this wasn't in effect in 2010, or whatever -- 2009, but we do comply with those recent requirement notices.

MR. KESHAVARZ: I appreciate your time, sir.

THE WITNESS: Thank you.

MR. KESHAVARZ: All right. Your attorney gets to ask you questions, if she wants.

MS. LASTORINO: I have no questions.

(Whereupon the proceedings are concluded at 4:15 p.m.)

C E R T I F I C A T E

I, Wanda Wilkins, a Certified Court Reporter and Notary Public of the State of New Jersey, certify that the foregoing is a true and accurate transcript of the stenographic notes of the deposition of said witness who was first duly sworn by me, on the date and place hereinbefore set forth.

I FURTHER CERTIFY that I am neither attorney nor counsel for, nor related to or employed by, any of the parties to the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed in this action, nor am I financially interested in this case.

Wanda Wilkins, CCR
LICENSE NO. 30XI00117400

ERRATA SHEET

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